101st Congress
1st Session

COMMITTEE PRINT

S. PRT.
101-58

STAFF STUDY

OF

ALLEGATIONS PERTAINING TO THE DEPARTMENT OF JUSTICE'S HANDLING OF A CONTRACT WITH INSLAW, INC.

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

OF THE

COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

SEPTEMBER 1989

Printed for the use of the Committee on Governmental Affairs

U.S. GOVERNMENT PRINTING OFFICE

22-345

WASHINGTON : 1989

For sale by the Superintendent of Documents, Congressional Sales Office
U.S. Government Printing Office, Washington, DC 20402

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SUMMARY

On September 28, 1987, Judge George F. Bason, Jr. of the United States Bankruptcy Court for the District of Columbia, in a sharply worded decision, found that the Department of Justice "took, converted, stole, . . . by trickery, fraud, and deceit" certain computer software which had been developed by INSLAW, Inc. The Court stated that in so doing the Department "engaged in an outrageous, deceitful, fraudulent game of cat and mouse, demonstrating contempt for both the law and any principle of fair dealing."

In response to this and other rulings of the Court in this matter, *INSLAW, Inc.* v. *United States of America*, as well as additional information which was presented to the Staff, the Permanent Subcommittee on Investigations conducted an investigation to determine whether officials or employees of the Department of Justice had engaged in improper or illegal activity with respect to the Department's dealings with INSLAW, Inc.

INSLAW, Inc. is a small computer software company located in Washington, D.C. In the early 1970's, INSLAW developed a criminal justice case management software known as PROMIS. Throughout the 1970's, and into the early 1980's, INSLAW continued to enhance the PROMIS software, which had been developed originally under grants from the Law Enforcement Assistance Administration, and marketed it to various federal, state, and local government agencies.

In the late 1970's, the Department of Justice awarded INSLAW a contract to conduct a feasibility study to determine if the PROMIS software could be adapted for use by the various United States Attorney offices throughout the country. Subsequent to this study, and a later pilot program installation in a limited number of offices, the Department, in 1982, awarded a contract to INSLAW to install the PROMIS software in the ninety-four U.S. Attorney offices nationwide. In late 1983, however, the Department terminated a portion of this contract. Following that termination, and the Department's subsequent withholding of certain payments, INSLAW filed for bankruptcy in early 1985.

In 1986, INSLAW filed suit against the Department, alleging, among other things, that the Department had improperly taken, and continued to hold, INSLAW's PROMIS software. During the course of this litigation, INSLAW raised separate allegations that the United States Trustee office, which was in charge of overseeing the administration of INSLAW's bankruptcy, had engaged in an improper attempt to convert INSLAW's bankruptcy proceedings from a reorganization proceeding to a liquidation proceeding. After conducting a separate hearing on these allegations, the Bankruptcy Court found that the Executive Office for U.S. Trustees, in conjunc-

tion with certain individuals in the Department of Justice, had engaged in an improper attempt to force INSLAW into liquidation. Subsequently, the Court also ruled in favor of INSLAW in connection with its allegations concerning the Department's improper taking of its software.

The Court's rulings were severely critical of certain middle and upper-level officials within the Department. Subsequent to the Court's decisions, the Subcommittee was presented with additional information by INSLAW which suggested the possibility of an even broader scope of impropriety than that which had been found by the Court. Indeed, INSLAW suggested that some of the highest placed officials within the Department, up to and including the Attorney General himself, may have been involved in a conspiracy against INSLAW, and may have done so in conjunction with individuals and companies outside of the Department.

Chairman Nunn directed the Subcommittee Staff to investigate this matter pursuant to the Subcommittee's authority, under rule XXV of the Standing Rules of the Senate and Senate Resolution 381, to investigate:

> the efficiency and economy of operations of all branches of the government including the possible existence of fraud, misfeasance, malfeasance, collusion, mismanagement, incompetence, corruption, or unethical practices, waste, extravagance, conflicts of interest, and the improper expenditure of government funds in transactions, contracts, and activities of the government or of government officials and employees and any and all such improper practices between government personnel and corporations, individuals, companies, or persons affiliated therewith, doing business with the government.

The Subcommittee did not attempt to reexamine all of the matters which had been the subject of litigation between INSLAW and the Department of Justice. Nor did the Subcommittee attempt to validate or disprove the findings and conclusions of the Bankruptcy Court. The Subcommittee treated the Court's findings and conclusions as valid judicial decisions unless and until overturned within the judicial system.

The Subcommittee used the Bankruptcy Court's findings and conclusions as a starting point to determine whether, as suggested by INSLAW, the facts found by the Court were but a small part of a broader pattern of impropriety. The only area in which the Subcommittee's investigation reexamined to any substantial degree matters which had been litigated before the Court was that of the alleged attempt within the Executive Office for U.S. Trustees to force INSLAW's liquidation after it had filed for bankruptcy. This was done because the facts relating to this matter bore more directly on the possibility of a conspiracy directed against INSLAW.

After an extensive investigation, the Staff found no proof of a conspiracy within the Department of Justice, or between the Department and outside parties, to force INSLAW into bankruptcy for the financial or personal benefit of Department officials or outside parties.

The Staff Study stresses, however, that the absence of a broad conspiracy within the Department does not absolve the Department of the serious implications of the Bankruptcy Court's findings or of this Staff Study. The Staff finds that the Department exercised poor judgment in ignoring the potential for a conflict of interest in its hiring of the PROMIS Project Director, and then, after receiving allegations of bias on his part, in failing to follow standard procedures to investigate them in a timely manner.

While such action does not constitute a conspiracy of the type alleged by INSLAW, it does suggest that the Department permitted personal bias to become a factor in the handling of a matter in which the Department itself was a principal party, without any visible effort to check or oversee that bias. When the Department, for whatever reasons, allows that kind of situation to persist, it opens the door for the kinds of allegations that eventually arose in the INSLAW case and which, utlimately, seriously undercut the Department's integrity in the public eye.

The Staff Study is also critical of the Department for its lack of cooperation with the Subcommittee in this investigation. In the Staff's view, the Department's intransigency on certain issues resulted in substantial delays and seriously undercut the Subcommittee's ability to interview, in an open, candid, and timely manner, all those Department employees who may have had knowledge of the INSLAW matter. The Study finds that, in requiring Departmental attorneys to simultaneously represent both the Department and individual Department employees in this investigation, the Department violated basic principles of conflict of interest and the attorney-client relationship.

On the basis of the investigation, the Staff Study concludes with a number of recommendations for the reexamination and reevaluation of certain programs and policies within the Department of Justice.

I. BACKGROUND

A. INSLAW's History and Its Contracts With the Department of Justice

In 1973, William A. Hamilton founded the Institute for Law and Social Research as a not-for-profit organization. The Institute focused on the development of computer software case management programs for the automation of law enforcement offices. Working under grants and contracts from the Law Enforcement Assistance Administration (the "LEAA"), the Institute developed a software program, known as the Prosecutors Management Information System ("PROMIS"), for automating certain law enforcement record keeping and case-monitoring activities.

In 1979, the Institute conducted a feasibility study for the Executive Office for U.S. Attorneys (the "EOUSA") to determine the best approach for improving the case management and information systems used by the U.S. Attorney offices. As a result of the feasibility study, the EOUSA decided to proceed with a pilot program which involved the installation of the Institute's PROMIS software in four U.S. Attorney offices. In two of these offices the PROMIS software was to be installed on mini-computers. In the other two offices PROMIS-like case control functions were to be developed for use on word processing equipment.

After the demise of the LEAA in 1981, the Institute determined to become a for-profit corporation that could market its software and expertise to current and potential PROMIS users. In January 1981, INSLAW was organized by Hamilton to purchase the assets of the Institute. Since its inception, Hamilton has been the President and Chairman of the Board of INSLAW.

In 1981, the EOUSA decided to proceed with full implementation of the PROMIS program in the remaining 90 U.S. Attorney offices nationwide. Despite difficulties encountered in the pilot program with the installaton of PROMIS on the word-processing equipment, and despite warnings from INSLAW that large scale use of word processing equipment to run PROMIS would be a mistake,[1] the EOUSA determined that the PROMIS program would be installed on mini-computers in the 20 largest U.S. Attorney offices, and on

[1] On May 18, 1981, Hamilton and John Gizzarelli, INSLAW's Counsel, met with William Tyson, Director of the EOUSA, and Lawrence McWhorter, Deputy Director of the EOUSA. During this meeting Hamilton and Gizzarelli advised against the use of word processing equipment to perform PROMIS-like functions. *See* Findings of Fact and Conclusions of Law, *INSLAW v. United States,* Adversary Proceeding No. 86-0069 (Bankr. D.D.C.), Finding of Fact No. 119 (hereinafter, Adversary Proceeding Finding of Fact No. —). In a September 19, 1981, memorandum from Ken Hill, Office of Management and Budget Debt Collection Staff, to Tom Campbell, Executive Assistant to the Deputy Attorney General, OMB transmitted to the Deputy Attorney General a comparative analysis prepared by INSLAW of the use of data processing equipment versus word processing equipment. In its transmittal memorandum, OMB stated, "[w]hile INSLAW may not be the most objective source for making this comparison, the technical information in the comparison table will stand up under scrutiny."

word processing equipment in 70 smaller offices. In March 1982, the Department executed a three-year, $10 million cost-plus contract with INSLAW toward that end.

The installation of the PROMIS software on mini-computers in the 20 large offices was, on the whole, successful; however, difficulties were encountered in attempting to adapt PROMIS for use on word processing equipment. As a result of these difficulties, which included problems both on INSLAW's part in creating a modified version of PROMIS, and on the Department's part in obtaining the actual equipment, the word processing part of the contract began lagging behind schedule.

Aside from problems with the word processing equipment, a number of other disputes arose between INSLAW and the Department during the course of the contract. The first, and perhaps most important dispute arose in the first few months of the contract when, in April 1982, INSLAW sent a detailed memorandum to the Department notifying it of its intent to market an enhanced version of PROMIS as a fee-generating product to public and private sector customers. This plan apparently caused concern among some of the Department's contracting officials,[2] who felt that PROMIS, because of its history of development under government funding, was part of the public domain. In a letter dated August 11, 1982, Associate Deputy Attorney General Stanley E. Morris responded to INSLAW's plans. Morris' letter stated in part:

> We agree that the original PROMIS, as defined in your letters of May 26, 1982, is in the public domain. We also agree that the "printed inquiry" enhancement is in the public domain. To the extent that any other enhancements to the system were privately funded by INSLAW and not specified to be delivered to the Department of Justice under any contract or other arrangement, INSLAW may assert whatever proprietary rights it may have.[3]

Despite this letter, the issue of INSLAW's ability to claim some proprietary rights in PROMIS would become the source of continuing battles between INSLAW and the Department. It would be raised in the course of other contract disputes between the parties and eventually it would become one of the central issues of the litigation initiated by INSLAW against the Department.

The proprietary rights issue became implicated again in the course of a dispute in late 1982, over an apparently technical violation by INSLAW of the Advance Payments clause of its contract. The Advance Payments clause, in essence, allowed INSLAW, upon meeting certain conditions, to be paid immediately upon submission of its invoices, rather than within the customary 60–90 day

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[2] C. Madison Brewer, PROMIS Project Director, testified during the Bankruptcy Court trial that he was concerned by the memorandum and was troubled by some of its implications. Trial Record, *INSLAW* v. *United States,* Adversary Proceeding No. 86-0069 (Bankr. D.D.C.), at 1666, 1670 (hereinafter, Adversary Proceeding Record, at —). Brewer also testified that he considered the memorandum "scurrilous." *Id.* at 1671. In a sworn deposition before the Subcommittee Staff, Peter Videnieks, Department of Justice Contracting Officer, testified that there was concern and skepticism on his and Brewer's part as to the position taken by INSLAW in its memorandum. Deposition of Peter Videnieks before the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs, August 9, 1988, at 33-34.

[3] Letter to James F. Rogers, Esq., Latham, Watkins & Hills, from Stanley E. Morris, Associate Deputy Attorney General, Department of Justice, August 11, 1982.

time frame. In a letter dated November 10, 1982, Contracting Officer Peter Videnieks notified INSLAW that it had violated the Advance Payments clause by assigning invoices in contravention of Paragraph L of the clause. At issue was a loan which INSLAW had obtained from the Bank of Bethesda, pursuant to which a lien was placed on payments received by INSLAW from the advanced payments account.

Although the terms of the Bank of Bethesda loan apparently placed INSLAW in technical violation of the Advanced Payments clause, it did not place the government in any financial risk.[4] Nevertheless, some of the Department officials overseeing the contract were concerned that the violation was further evidence of INSLAW's financial instability.[5] As a result, the Department threatened to terminate the Advance Payments provision of the contract and demanded that INSLAW produce to the Department "all computer programs and supporting documentation developed for or relating to this contract." [6]

Negotiations over this dispute led to a supplemental agreement to the contract, known as Modification 12, signed in April 1983, whereby the Department relented on its threatened termination of advance payments in exchange for INSLAW's acceding to the Department's demands for the computer program and supporting documentation. The agreement also contained a provision restricting the dissemination of the computer software to the EOUSA and the ninety-four U.S. Attorney offices covered by the original contract. It further stated that under no circumstances would the Department permit dissemination of the software beyond those offices, pending resolution of the issues extant between the Department and INSLAW.[7] Under this agreement the Department obtained the PROMIS software, with INSLAW's claimed enhancements.

Further disputes continued to arise between the Department and INSLAW. In mid-1983, the Department rejected various of INSLAW's efforts to identify proprietary enhancements to the PROMIS software.[8] Around the same time it raised objections to the negotiated formula for INSLAW's billing of time-sharing services.[9] The Department also ceased payments on INSLAW's vouchers for profit, claiming that there had been cost overruns.[10] This

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[4] Adversary Proceeding Findings of Fact Nos. 198–199. Department of Justice auditors concluded that the Bank of Bethesda loan and lien, in reality, presented no financial risk to the government. *See* Deposition of Robert Whitely, *INSLAW* v. *United States,* Adversary Proceeding No. 86–0069 (Bankr. D.D.C.) June 11, 1987, at 36–38, 40–44.

[5] *See* Deposition of C. Madison Brewer, *INSLAW, Inc.,* v. *United States,* Adversary Proceeding No. 86–0069 (Bankr. D.D.C.), June 19, 1987, at 230–233; Deposition of Peter Videnieks, *INSLAW, Inc.* v. *United States,* Adversary Proceeding No. 86–0069 (Bankr. D.D.C.), June 17, 1987, at 208.

[6] Letter to INSLAW, Inc., from Michael Snyder, Contracting Officer's Technical Representative, Department of Justice, November 19, 1982.

[7] The agreement between INSLAW and the Department is set forth in full in Modification No. P0012 to Contract No. JVUSA–82–C–0074.

[8] *See* Letter to Harvey G. Sherzer, Esq., Pettit and Martin, from Peter Videnieks, Contracting Officer, Justice Management Division, Department of Justice, April 21, 1983; Letter to Harvey G. Sherzer, Esq., Pettit and Martin, from Peter Videnieks, Contracting Officer, Justice Management Division, Department of Justice, June 10, 1983; Letter to Pettit and Martin, ATTN: H.G. Sherzer, from Peter Videnieks, Contracting Officer, Justice Management Division, Department of Justice, July 21, 1983.

[9] *See* Letter to INSLAW, Inc., ATTN: W.A. Hamilton, from Peter Videnieks, Contracting Officer, Justice Management Division, Department of Justice, July 18, 1983.

[10] Letter to INSLAW, Inc., ATTN: M.W. Hannon, from Peter Videnieks, Contracting Officer, Justice Management Division, Department of Justice, September 29, 1983.

eventually resulted in the withholding of approximately $1 million in payments.

In December 1983, the Department of Justice PROMIS Oversight Committee [11] approved the initiation of default termination proceedings against INSLAW due to the lack of success which had been encountered on the word processing part of the contract. In January 1984, Videnieks issued a Show Cause notice to INSLAW in connection with the default termination decision.[12] Subsequently, however, William J. Snider the Department's Administrative Counsel, issued a legal opinion, dated February 8, 1984, which in effect informed the Contracting Officer that there was insufficient legal basis to justify a default termination due to the lack of a specific implementation schedule against which INSLAW's performance could be measured. The opinion stated in part:

> It is noted the initial implementations were scheduled to commence in March 1983 and proceed seriatim thereafter. The file does not indicate the government proceeded with a termination action at the time. Failure to object at the time delivery becomes late, or a reasonable time thereafter, constitutes a waiver. [citation omitted] To reestablish a time requirement, a notice must be given to the contractor setting forth such a schedule. This notice must be reasonable and specific from the standpoint of the performance capabilities of the contractor as of the date such notice is given.[13]

In light of this legal opinion, the Department, on February 13, 1984, terminated the word processing portion of the contract for the convenience of the government.[14]

Over the course of the next several months, INSLAW attempted to work out some new arrangement with the Department to compensate for the termination of the word processing portion of the contract. This effort ended in failure. In February 1985, INSLAW filed a petition for reorganization under Chapter 11 of the U.S. Bankruptcy Code in the U.S. Bankruptcy Court for the District of Columbia.

B. INSLAW Pursues Litigation Against the Department of Justice and Publicly Questions the Propriety of Actions by the Department

INSLAW apparently had complained to Department officials a number of times during the course of its contract disputes about what it perceived as bias and other improper actions by certain De-

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[11] The PROMIS Oversight Committee was formed on August 17, 1981 for the purpose of measuring project performance against the project plan. The Committee consisted of the Associate Attorney General, and one member each from the Justice Management Division, the Executive Office for U.S. Attorneys, and the Deputy Attorney General's office.

[12] *See* Letter to INSLAW, Inc., ATTN: W.A. Hamilton, from Peter Videnieks, Contracting Officer, Justice Management Division, Department of Justice, January 5, 1984.

[13] Memorandum to Peter Videnieks, Contracting Officer, Department of Justice, from William Snider, Administrative Counsel, Department of Justice, February 8, 1984.

[14] *See* Letter to INSLAW, Inc., ATTN: M.W. Hannon, from Peter Videnieks, Contracting Officer, Department of Justice, February 13, 1984.

partment contract officials.[15] Subsequent to its bankruptcy filing, INSLAW began to consider the possibility of bringing suit against the Department. In March 1986, the Bankruptcy Court approved INSLAW's retention of the Washington, DC law firm of Dickstein, Shapiro, and Morin for the purpose of pursuing such litigation.

On June 9, 1986, INSLAW filed a *Complaint for Declaratory Judgment, and for Order Enforcing Automatic Stay, and Damages for Willful Violation of Automatic Stay* (the "Complaint') in the Bankruptcy Court. INSLAW stated the basis for its complaint as follows:

> At the center of INSLAW's grievance are the actions of C. Madison Brewer, III ("Brewer"), a DOJ employee who had been employed by a predecessor organization to INSLAW from November 1974 to May 1976 before being dismissed for cause. Brewer thereafter was employed by DOJ and was placed in charge of administering the DOJ/ INSLAW program described hereafter. Upon information and belief, Brewer was biased against INSLAW based upon resentment engendered by his discharge. Brewer's actions were instrumental in propelling INSLAW into bankruptcy, and thereafter hindered INSLAW in its development of a plan of reorganization. Brewer's bias and conduct relating to INSLAW have been made known to officials at the highest levels of DOJ, including the Attorney General and Deputy Attorney General D. Lowell Jensen (the latter having a previously developed negative attitude towards INSLAW's product), yet DOJ has failed to take action to insulate the administration of the DOJ/INSLAW program from Brewer's bias.[16]

INSLAW further alleged that the Department had improperly taken and exercised control over the enhanced version of PROMIS[17] and that its actions had cast doubt in the minds of third parties as to INSLAW's ownership of this enhanced version,[18] thus preventing INSLAW from generating business. INSLAW cast the principal blame for these actions upon Brewer and his staff.

Although INSLAW had fosused on Brewer in its complaint, it also raised questions as to the role Deputy Attorney General D. Lowell Jensen may have played in connection with the Department's handling of the INSLAW contract. In mid-1986, INSLAW brought such questions to the attention of the Senate Committee on the Judiciary, which was then considering the nomination of Jensen for the position of United States District Court Judge for the Northern District of California. As a result, Senator Paul Simon (D-Illinois) propounded a series of written questions to Jensen, inquiring generally as to his role in the administration of

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[15] The Bankruptcy Court found that INSLAW or its representatives had complained to various individuals in the Department on twelve separate occasions, beginning in May 1982, and running through November 1984. *See* Adversary Proceeding Findings of Fact Nos. 285–289, 336–347.

[16] Complaint at Paragraph 7. A copy of INSLAW's Complaint is contained in Appendix A.

[17] *Id.* at Paragraphs 5, 18.

[18] *Id.* at Paragraphs 19, 29, 31.

the INSLAW contract and his relationship with Brewer. In response to Senator Simon's questions, Jensen responded that he was responsible for providing overall supervision and direction to the EOUSA and, consequently, to Brewer; however, Jensen stated that the decision to terminate the word processing portion of the INSLAW contract was made not by him, but by the Department's contracting officer. With respect to allegations of Brewer's bias, Jensen responded that he had never seen any evidence that any such bias, if it existed, had affected the Department's handling of the INSLAW contract.[19]

The INSLAW matter was again raised by the Judiciary Committee in the context of confirmation hearings for Arnold Burns, who had been nominated to succeed Jensen as Deputy Attorney General. In a letter dated July 1, 1986, Senator Charles Mathias (R-Maryland) asked Burns whether, upon becoming Deputy Attorney General, he would familiarize himself with the facts of the case, consider the possibility of an amicable settlement, and take precautions to ensure that similar controversies were avoided. Burns responded with a written assurance to Senator Mathias that he would take such steps.[20]

In the meantime, INSLAW continued to pursue its litigation against the Department. On February 25, 1987, INSLAW filed an application with the Bankruptcy Court seeking Court assistance to obtain independent handling of the case by the Department of Justice. The application asked the Court to establish "a means whereby the Justice Department will conduct Adversary Proceeding No. 86-0069 [INSLAW's suit against the Department] completely and entirely independent of any Department of Justice officials who are involved in the allegations made in said Adversary Proceeding." [21]

In connection with this application, INSLAW's Hamilton and his wife, Nancy, met with Anthony Pasciuto in March 1987. At the time, Pasciuto was the Deputy Director (Administration) of the Executive Office for U.S. Trustees (the "EOUST"). Pasciuto told the Hamiltons [22] that: (1) he had heard from U.S. Trustee William White, whose office was in charge of overseeing the administration of INSLAW's bankruptcy proceedings, that Thomas Stanton, the Director of the EOUST, had called White on a number of occasions to express displeasure with the way White was handling the INSLAW bankruptcy proceedings; (2) he understood from White that White had received pressure from Stanton on a number of occasions to take some action against INSLAW; [23] (3) he had been

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[19] See Appendix B for Senator Simon's letter and Mr. Jensen's response.

[20] See Appendix B for Senator Mathias' letter and Mr. Burns' response.

[21] Application for the Court's Assistance to Obtain Independent Handling, *In Re: INSLAW, Inc.*, Bankruptcy Case 85-00070 (Bankr. D.D.C.).

[22] The above information as to what Pasciuto told the Hamiltons in their March meeting is taken from Pasciuto's testimony before the Subcommittee Staff in a sworn deposition conducted on July 15, 1988. Pasciuto also testified concerning these events in a sworn deposition conducted by INSLAW's attorneys on March 26, 1987, and during the Independent Handling Proceeding on June 1 & 2, 1987.

[23] There is some disagreement between Pasciuto's testimony and that of the Hamilton's as to whether Pasciuto had told the Hamiltons specifically that White had received pressure from Stanton to *convert* INSLAW's bankruptcy case. Nancy Hamilton's contemporaneous handwritten notes of the conversation contain the phrase "St call Wh & sd had to be convertd" [Stanton called White and said had to be converted—Nancy Hamilton's translation of her shorthand]. Pasciuto, however, testified before the Subcommittee Staff that he did not remember using the

Continued

told by Cornelius Blackshear, the former U.S. Trustee for the Southern District of New York, that Stanton had contacted Blackshear during the time he was U.S. Trustee, to request that one of Blackshear's top assistants, Harold Jones, be detailed to the Washington area to work on the INSLAW case; and (4) Blackshear had refused Stanton's request, but admitted that he had received a great deal of pressure from Stanton.

Pasciuto's revelations led INSLAW to depose White, Stanton, Jones and Blackshear. Although White, Stanton and Jones all contradicted Pasciuto's story, Blackshear gave sworn testimony which essentially corroborated it. In a sworn deposition conducted by INSLAW's attorneys on March 25, 1987, Blackshear testified as follows with respect to a telephone call he had had with White:

> . . . He indicated to me that Tom Stanton was going to request that Harry Jones be assigned to the Washington office as a special assistant United States Trustee to assist in the management as well as the day-to-day administrative matters in the INSLAW case, basically I asked him for what reason.
>
> He said, for one of the reasons, Tom thinks maybe the case should be converted or dismissed, and at that time I told him, you may want to relate back to Tom that I think it is improper, and under no circumstances unless I get a direct order from the Attorney General, that I am not going to have my assistant down there.[24]

Later in the deposition, the following colloquy took place:

> Q. The question is, did Mr. White indicate to you that he, Mr. White, had received pressure from Mr. Stanton to have the case converted to a Chapter 7 and have the debtor liquidated?
>
> A. Yes.[25]

Within two days of his testimony, though, Blackshear executed a sworn affidavit recanting that testimony. Blackshear's affidavit stated, in part:

> Subsequent to testifying [at the March 25, 1987, deposition] and prior to executing the transcript, I had two (2) telephone conversations with William White. During these conversations I recalled certain facts which I believe to be true and which materially alter portions of the testimony which I gave at my deposition. I testified that William White had advised me that Tom Stanton had brought pressure on him to convert the *INSLAW* case. (*See* transcript at pp. 8–17) I now recall that no such discussion took

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word "convert" in his conversation with the Hamiltons, and that White had never used the word with him. Pasciuto further testified before the Staff that this was the reason why he had answered in the negative when asked during the Independent Handling Proceeding whether he remembered White telling him that Stanton had pressured White to convert the INSLAW case to Chapter 7. Pasciuto's negative responses during the Independent Handling Proceeding lead INSLAW to attempt to impeach Pasciuto's testimony during that proceeding.

[24] Deposition of Hon. Cornelius Blackshear, *In Re: INSLAW, Inc.*, Bankruptcy Case No. 85-00070 (Bankr. D.D.C.), March 25, 1987, at 8–9.

[25] *Id.* at 10.

> place. Rather, I recall that William White informed me that the Internal Revenue Service had pressured him to join in a motion to convert the United Press International Chapter 11 case. I have never been contacted by a representative of the Department of Justice with respect to the conversion of the *INSLAW* case.[26]

Despite this, the Bankruptcy Court, after a four-day hearing in June 1987, ruled that:

> . . . the United States Department of Justice, acting through its employees, unlawfully, intentionally and willfully sought to cause the conversion of INSLAW's Chapter 11 reorganization case to a Chapter 7 liquidation case without justification and by improper means . . . .[27]

In reaching its conclusion, the Court commented on the credibility of a number of witnesses in the case. The Court termed Stanton's testimony "in crucial respects to be evasive and unbelieveable" [28] The testimony of Jack Rugh, one of Brewer's subordinates in the EOUSA, was found to be "simply on its face not believable." [29] With respect to White's testimony, the Court stated that "Mr. White's testimony, both on deposition and on the witness stand, is so contrary to other credible evidence, including his own contemporaneous handwritten notes, that it is simply impossible for this Court to believe a number of things that Mr. White has testified to." [30] In dealing with Blackshear's testimony and subsequent recantation, the Court stated:

> because Judge Blackshear's original testimony is in accord with the other credible evidence, and his recantation is not, this Court accepts as true Judge Blackshear's original testimony and holds that his recantation is the result of an honest mistake on his part.[31]

On the basis of its findings, the Court issued an injunction against the EOUST and the Department, prohibiting any contact by them, and anyone associated with them, with the U.S. Trustee office in Alexandria (which was overseeing INSLAW's bankruptcy proceedings) concerning the INSLAW case, other than for the purpose of simple requests for information.[32] The Court also ordered that the U.S. Trustee office in Alexandria promptly study to the Court, and counsel for INSLAW, any contact by the EOUST or the Department concerning the INSLAW case, whether or not it was simply a request for information.[33]

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[26] Affidavit of Hon. Cornelius Blackshear, *In Re: INSLAW, Inc.*, Bankruptcy Case No. 85-00070 (Bankr. D.D.C.), at Paragraph 3. Blackshear's affidavit did not recant his testimony with respect to Stanton's apparent attempt to bring Harry Jones down from New York to work on the INSLAW case.

[27] Order, *In Re: INSLAW, Inc.*, Bankruptcy Case No. 85-00070 (Bankr. D.D.C.), July 20, 1987.

[28] Trial Record, *In Re: INSLAW, Inc.*, Bankruptcy Case No. 85-00070 (Bankr. D.D.C.), at 1011 (hereinafter, Independent Handling Proceeding Record, at —).

[29] Independent Handling Proceeding Record at 1014.

[30] *Id.* at 1016.

[31] *Id.* at 1026.

[32] *See* Order, *supra* at n. 27.

[33] *See* Order, *supra* at n. 27.

On July 17, 1987, Bankruptcy Court Judge Bason sent a copy of the Court's Order to Attorney General Meese. In his transmittal letter, Judge Bason wrote:

> Your attention is respectfully directed to the third decretal paragraph on page 3 of the Order, by which this Court "extend[s] an invitation to the Attorney General of the United States to designate an appropriate official outside the United States Department of Justice to review the disputes between INSLAW, Inc. and the Department of Justice and to give the Attorney General independent advice with respect thereto.[34]

Shortly after its ruling on INSLAW's application for independent handling, the Court proceeded to consider INSLAW's principal allegations against the Department. On July 20, 1987, the Court heard opening statements in what would be a two and one-half week trial. During the course of that trial the Court considered the testimony of over 40 witnesses and was presented with literally thousands of pages of documentary evidence.

On September 28, 1987, the Court delivered an oral ruling from the bench. The Court made the following two basic findings in its ruling:

> The first of those two is that Mr. Brewer, believing he had been wrongfully discharged by Mr. Hamilton and INSLAW, developed an intense and abiding hatred for Mr. Hamilton and INSLAW and when the opportunity presented itself, Mr. Brewer applied for and obtained the job as project manager of the contract between INSLAW and the Executive Office of U.S. Attorneys of the Justice Department and set out to use that position in order to vent his spleen against INSLAW.
>
> The second basic finding is that the Department of Justice took, converted, stole, INSLAW's enhanced PROMIS by trickery, fraud, and deceit, and the Department of Justice has used and continues to use enhanced PROMIS not only in the 20 U.S. Attorney's offices in which the Department of Justice is under contract entitled to use a different version of PROMIS, but also in a number of other U.S. Attorney's offices. I believe, approximately 45 at the present date.[35]

The Court noted that, despite INSLAW's repeated complaints to the Department about what it perceived as Brewer's bias and prejudice nothing was done by the Department to investigate the matter.[36] The Court concluded that:

> [T]he failure even to begin to investigate is outrageous and indefensible. It constitutes . . . an institutional decision by the Department of Justice consciously made at the

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[34] Letter to Hon. Edwin Meese, III, Attorney General, from Hon. George Francis Bason, Jr., United States Bankruptcy Court Judge, July 17, 1987. A copy of Judge Bason's transmission to Attorney General Meese is contained in Appendix C. The Department, to this date, has never taken any action in response to the Court's "invitation."

[35] Adversary Proceeding Record at 8–9.

[36] *Id.* at 12–13.

> highest level simply to ignore serious questions of ethical propriety, impropriety, made repeatedly by persons of unquestioned probity and integrity, and this failure constitutes bad faith, vexatiousness, wantonness, and oppresiveness. . . .[37]

In this ruling, as in its ruling on INSLAW's application for independent handling, the Court questioned the veracity of a number of witnesses from the Department of Justice, using such terms to describe their testimony as "biased," "unbelievable," and "unreliable." [38]

C. INSLAW Alleges That the Bankruptcy Court's Findings May Have Reached Only a Small Part of a Broad Conspiracy Within the Department Against INSLAW

With the onset of its litigation against the Department, INSLAW's claims began receiving widespread press coverage. On June 19, 1986, *San Francisco Examiner* columnist Warren Hinckle devoted his column to INSLAW's allegations of a "vendetta" conducted against it by Brewer and Jensen.[39] On October 12, 1986, *The Los Angeles Times* ran a 1200 word article, accompanied by a photograph of D. Lowell Jensen, under the headline "Suit Claims Ex-Justice Official Helped Force Firm into Bankruptcy."[40] *The Washington Post* Sunday Business Section for March 29, 1987, contained a 2600-word front page article outlining INSLAW's charges against Brewer and Jensen.[41] The Bankruptcy Court's June 1987 ruling in the Independent Handling Proceeding and its September 1987 ruling in the Adversary Proceeding were the subject of numerous articles in such newspapers and publications as *The Washington Post, The New York Times, The Los Angeles Times, The San Diego Union, The St. Louis Post Dispatch, The Philadelphia Inquirer,* and *Time.*[42] Subsequently, major articles concerning the INSLAW case

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[37] *Id.* at 16-17.

[38] See Appendix D for a transcript of the Court's oral ruling.

[39] *San Francisco Examiner,* June 19, 1986, p. B-1.

[40] *The Los Angeles Times,* October 12, 1986, p. 3. A copy of this article is contained in Appendix E.

[41] *The Washington Post,* March 29, 1987, p. H1. A copy of this article is contained in Appendix E.

[42] The headlines of the various articles included the following: "INSLAW Judge Points at 2 'Smoking Guns'; Notes Cited as Supporting Company's Claim of Justice Department Harassment," *The Washington Post,* June 10, 1987, p. F1; "Justice Department is Held in Contempt in a Bankruptcy," *The New York Times,* June 14, 1987, p. 37; "Judge Charges Justice Department Drove Firm to Bankruptcy," *The Los Angeles Times, September 29, 1987, p. 1; and "U.S. Stole Software, Judge Rules," The New York Times,* September 29, 1987, p. D8.

On October 6, 1987, *The Washington Post* ran a stinging editorial in which it stated:

> a[n] . . . immediate public accounting is in order . . . Why did no one at the department take seriously the charges of conflict of interest? What steps are being taken to provide a permanent mechanism within the department for reviewing charges of this kind?

The Washington Post, October 6, 1987, p. A20. A copy of this editorial is contained in Appendix E.

appeared in *Legal Times,*[43] *The American Lawyer,*[44] and *Barron's.*[45]

Many of the media studies focused not only on the Bankruptcy Court's unusually harsh opinion, but also on new allegations being raised by Hamilton.

Those allegations were brought to the attention of the Subcommittee initially through the office of Senator Christopher Dodd (D-Connecticut),[46] and subsequently in a November 1987 meeting with William and Nancy Hamilton of INSLAW, and their attorney, Charles Work, of McDermott, Will and Emery.

During this meeting with the Staff, and in subsequent meetings in late 1987, and early 1988, Hamilton suggested that the Bankruptcy Court's rulings may have touched on only a small part of what was, according to Hamilton, a conspiracy which reached into the upper echelons of the Department of Justice, and whose aim to force the liquidation of INSLAW.

To support his theory of a conspiracy, Hamilton pointed to a series of "strange coincidences" involving various aspects of INSLAW's dealings with the Department. According to Hamilton, these coincidences included the following:

> (1) Much of the Department's focus on the problems being encountered with the word processing portion of the contract occurred after D. Lowell Jensen became Chairman of the Department's PROMIS Oversight Committee. Jensen, according to Hamilton, had been involved at one time in his career with the development of an alternative case management system;
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> (2) Many of the Department's major disputes with INSLAW over the payment of fees arose within 90 days after INSLAW had received, and spurned, an offer to be

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[43] *Legal Times* ran an extensive front-page article on October 12, 1987, under the headline "Messy INSLAW Fight Engulfs Dickstein; Former Client Claims Criticism by Firm Led to Bum Advice." The article detailed what were, at the time, new claims by INSLAW which "[had] not been incorporated in any court filing"—and which *Legal Times* emphasized were "so far unsubstantiated"—that the representation provided by INSLAW's former counsel, Dickstein, Shapiro & Morin, was "compromised by the firm's political ties to the Justice Department and Attorney General Edwin Meese III." A copy of this article is contained in Appendix E. See Section II G of this Study for the results of the Staff's investigation of these allegations.

[44] In its December 1987 issue, *The American Lawyer* ran a 6-page story under the headline "Vendetta" which detailed INSLAW's claims in both the Independent Handling Proceeding and the Adversary Proceeding, as well as the Bankruptcy Court's rulings in those proceedings. The story closed by saying that "Hamilton says he is still searching for evidence of a wider conspiracy." A copy of this article is contained in Appendix E.

[45] In an 11-page, two-part story (March 21 & April 4, 1988), *Barron's* detailed INSLAW's claims against the Department, including new allegations that INSLAW's problems with the Department had resulted from a conspiracy designed to benefit Hadron, Inc., a company which was controlled by Earl Brian, an individual with ties to Attorney General Edwin Meese III. A copy of this article is contained in Appendix E. See Section II B of this Study for the results of the Staff's investigation of these allegations.

[46] Senator Dodd had developed an interest in the matter as the result of a constituent inquiry. Indeed, following the Department's failure to respond to the Bankruptcy Court's June 1987 request that Attorney General Meese designate an appropriate official outside the Department to review INSLAW's allegations, Senator Dodd wrote a letter to the Department to inquire of its intentions. In a response dated August 31, 1987, Assistant Attorney General John Bolton wrote:

> The INSLAW litigation is but one of many hundred procurement disputes brought by government contractors before the courts and contract appeals boards.
>
> It differs, if at all, only in the breadth of the allegations which have been made, the willingness of the Bankruptcy Court to entertain these allegations . . . and the number of contacts [INSLAW] has made with the media and Members of Congress.

Senator Dodd's letter, and the Department's response, are contained in Appendix F.

acquired by Hadron, Inc., a company controlled by a friend of Attorney General Meese;

(3) AT&T Information Services, one of INSLAW's creditors, selected as its bankruptcy counsel an attorney from a small West Orange, New Jersey law firm. This attorney, who had been extremely aggressive in challenging some of INSLAW's efforts to reorganize, previously had been associated with the law firm of Deputy Attorney General Arnold Burns;

(4) Anthony Pasciuto, the Deputy Director of the EOUST, who provided INSLAW with information concerning an apparent attempt by the EOUST to have INSLAW's bankruptcy proceedings improperly converted, became the subject of an investigation by the Department's Office of Professional Responsibility (the "OPR"). OPR recommended that Pasciuto be fired;

(5) Leigh Ratiner, a partner in the law firm of Dickstein, Shapiro & Morin, who had been INSLAW's lead counsel, was asked by the firm's Senior Policy Committee to withdraw from the partnership. It was subsequently revealed in the Justice Department's Answers to INSLAW's Interrogatories that Leonard Garment, a member of Dickstein, Shapiro & Morin's Senior Policy Committee, who had at one time represented Attorney General Meese, had discussed the INSLAW case, unbeknownst to either Ratiner or INSLAW, with both Deputy Attorney General Burns and Attorney General Meese;

(6) Judge George Bason, the Bankruptcy Court judge who had rendered the decisions in the INSLAW case, was denied reappointment to the bench approximately three months after he had ruled that the Department had stolen INSLAW's enhanced version of PROMIS. Judge Bason was replaced with an attorney from the Tax Division of the Department of Justice, who at one time had made a brief appearance in the INSLAW case.

Hamilton alleged that INSLAW's problems with the Department were the result of INSLAW's having spurned an offer to be acquired by Hadron, Inc., a company controlled by Dr. Earl Brian, an associate of Attorney General Meese. Hamilton stated that he believed that a plan existed within the Department to drive INSLAW out of business in order to allow Hadron to acquire INSLAW's assets.

Hamilton also stated that he believed that then-Deputy Attorney General Jensen and Brewer participated in these efforts out of their own personal dislike for INSLAW and/or Hamilton.

According to Hamilton, these efforts included the sabotaging of INSLAW's contract with the Department in order to force the company into bankruptcy; an attempt to force the conversion of INSLAW's bankruptcy proceedings from a reorganization of a liquidation in order to force INSLAW into selling its assets; an attempt to sabotage INSLAW's litigation against the Department by undermining its lead counsel; and an attempt to punish the judge who

ruled against the Department by undermining his chances to be reappointed.

The Bankruptcy Court had never been presented with broad conspiracy allegations, nor did it rule on such; nevertheless, some of its Findings of Fact in the Independent Handling Proceeding and the Adversary Proceeding seemed consistent, at least in part, with some of Hamilton's theories. In particular, the Court had made the following Findings of Fact:

> (1) Jensen adopted as his own view the notion, published in 1980 in the book, *Improving Prosecution?*, that it was a mistake for DOJ's Law Enforcement Assistance Administration (LEAA) to have selected INSLAW's PROMIS case tracking software for nationwide diffusion when the DALITE case tracking software developed under Jensen's auspices in Alameda County, California, was available and may, according to Jensen, have been superior to PROMIS. (Adversary Proceeding, Finding of Fact No. 307);
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> (2) In April 1981, immediately after being appointed to the U.S. Department of Justice as Assistant Attorney General for the Criminal Division, Jensen volunteered to INSLAW employees the belief that the initial two generations of INSLAW's PROMIS software were inferior to the corresponding generations of the DALITE software. (Adversary Proceeding Finding of Fact No. 308);
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> (3) In 1981, Jensen expressed to Associate Deputy Attorney General Stan Morris his lack of enthusiasm about the 1981 DOJ decision to install the PROMIS software in the 20 largest U.S. Attorney's offices. (Adversary Proceeding Finding of Fact No. 309);
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> (4) [EOUSA Director William] Tyson told [EOUSA Deputy Director Lawrence] McWhorter about a Presidential Appointee biased against INSLAW. (Adversary Proceeding Finding of Fact No. 314);
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> (5) Despite the fact that Brewer had no prior experience with computers, computer technology, computer programming, accounting, auditing or contract administration, he was hired as the PROMIS Project Manager and began in that position in January 1982. (Adversary Proceeding Finding of Fact No. 129);
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> (6) Despite [an] express direction from the Associate Deputy Attorney General at DOJ, Brewer continued to involve himself in consideration of INSLAW's April 2nd inquiry on proprietary enhancements. (Adversary Proceeding Finding of Fact No. 185) Tyson's deputy, McWhorter, who had been directed by Morris to ". . . take the point outside the Department on this subject" and to replace Brewer in this regard, did nothing to inhibit Brewer's involvement in the proprietary enhancements issue. (Adversary Proceeding Finding of Fact No. 186);
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> (7) The DOJ persisted in its attempts to interrelate resolution of the advance payments issue and INSLAW's assertion of proprietary rights in Enhanced PROMIS. When it became clear to INSLAW in March 1983 that DOJ would

not resolve the advance payment issue without first obtaining the PROMIS software, INSLAW proposed in a March 11, 1983, letter to DOJ that the parties enter into an escrow agreement pursuant to which DOJ would receive the software if, and only if, INSLAW went into bankruptcy. Brewer's and Videnieks' professed concern about INSLAW's financial viability was merely a smoke screen; such concerns would have been fully met by placing the PROMIS software in escrow with a third party. The only reason such an arrangement was not acceptable to DOJ was because it wanted to "get" INSLAW's "goods." This is further evident from the exchange of correspondence from Mr. Rugh whereby the Department having gotten the goods, pretended to find fault with INSLAW's methodology for pursuing private funding while refusing to divulge to INSLAW either any realistic purported defects in that methodology or any alternative methodology which would be acceptable to DOJ. DOJ thus took the tack designed to be the most harmful to INSLAW without any conceivable concomitant benefit to the government other than the desire to get away with taking something without the right. (Adversary Proceeding Finding of Fact No. 229);

(8) Sometime between February 7 and February 20, 1985, Brewer discussed the INSLAW Chapter 11 bankrupcty case with Thomas J. Stanton, Director of the Executive Office of United States Trustee ("EOUST"). At the time of Brewer's discussion with Stanton, EOUSA and DOJ believed that they had an interest in seeing that INSLAW was liquidated in order to weaken or eliminate INSLAW's ability to press its contract disputes with DOJ. As a result of the discussion, Stanton made a commitment to Brewer that he would undertake to cause the conversion of INSLAW's Chapter 11 case to a Chapter 7 liquidation case. (Bench ruling in Independent Handling Proceeding, incorporated in Adversary Proceeding Finding of Fact No. 351).

The Bankruptcy Court's rulings had raised serious questions of impropriety with respect to the Department's procurement and contracting practices, its administration of the bankrupcty program, and its willingness to detect and prevent situations of actual or apparent conflict of interest. Hamilton's subsequent allegations and theories raised additional disturbing possibilities. In light of this, the Subcommittee commenced a preliminary inquiry into the actions allegedly taken by the Department of Justice with respect to INSLAW. On April 14, 1988, Subcommittee Chairman Nunn authorized a formal investigation of this matter.

II. SUMMARY OF THE STAFF'S INVESTIGATION

During its investigation, the Staff reviewed tens of thousands of pages of documents and interviewed or deposed over 50 individuals, including bankrupcty officials; current and former Justice Department employees; representatives of INSLAW; Congressional Staff members; former and present GAO personnel; AT&T employees; Los Angeles County, California, employees; Alameda County, California, employees; former and present employees and officers of Hadron, Inc.; Dickstein, Shapiro, & Morin law firm partners; sitting U.S. District Court judges; and various others. The Subcommittee served document and deposition subpoenas on a number of witnesses, including employees of the Department of Justice. The Staff also received a Department briefing on PROJECT EAGLE, the Department's strategic procurement of integrated office automation hardware, software and support.

This section of the Study is segregated by allegation, and contains a summary of the investigative effort concerning each allegation. During the investigation, the Staff pursued a number of potential scenarios to determine if what happened to INSLAW was, in fact, part of a broad conspiracy to force INSLAW's liquidation in order to steal the PROMIS software. The Staff did not attempt to investigate all of the matters which had been the subject of litigation between INSLAW and the Department of Justice. Nor did the Staff attempt to validate or disprove the Findings of Fact and Conclusions of Law of the Bankruptcy Court; rather, the Staff treated the Court's decisions as a starting point from which Hamilton's subsequent allegations of a conspiracy within the Justice Department could be examined.

What follows below is merely a summary of the Staff's investigation, and does not detail each fact uncovered by the Subcommittee. Where appropriate, allegations of a substantial nature were thoroughly investigated while others were only tested for plausibility. The Staff found no proof that a "massive conspiracy, reaching to the highest levels of the Department of Justice" existed.

A. The Staff Found No Proof That Attorney General Edwin Meese, Deputy Attorney General D. Lowell Jensen or Other Justice Department Officials Were Involved in a Conspiracy To Ruin INSLAW, or To Steal INSLAW's Product for Their Own Benefit

Hamilton told the staff that he believes:

> During the first year of the Reagan Presidency, Edwin Meese in the White House and D. Lowell Jensen in the Department of Justice adopted a plan to install the computer-based PROMIS case management system in every litigation offfice of DOJ, and to award a "massive sweetheart

> contract" for that purpose to Hadron, Inc.[1] . . . [and] during 1985, the Meese-Jensen plan included as a major feature an effort to force INSLAW's liquidation "through unlawful means and without justification." [2]

Hamilton alleged that Jensen, in the early 1970's while District Attorney for Alameda County, California, had chosen to develop his own computer software for tracking cases rather than select an earlier version of PROMIS.[3] Hamilton stated that Jensen tried to pressure the Los Angeles County District Attorney's office into using Alameda County's case tracking system, known as DALITE.[4] Hamilton alleged that after Los Angeles chose PROMIS, Jensen carried a bias against INSLAW and PROMIS which persisted a decade later when Jensen reached the position of Deputy Attorney General of the United States.

Aside from Hamilton, everyone the staff interviewed denied knowledge of any involvement by Jensen or Meese in any plan to ruin INSLAW. The Staff uncovered no evidence linking Jensen with Earl Brian or Hadron, Inc.[5] No former or present Justice Department employees interviewed by the staff disclosed any knowledge of wrongdoing by Jensen or Meese regarding this matter.

The Staff interviewed many Alameda and Los Angeles County employees. No information to support the theory that Jensen ever had or held a bias against Hamilton, INSLAW, or PROMIS was disclosed. One Los Angeles County employee, who was involved in the procurement of PROMIS for Los Angeles, did say that he had felt pressure from Alameda Country employees to use their system (DALITE) in Los Angeles, describing it as "the kind you feel on a used car lot." [6]

The employee told the Staff, however, that he alone had felt this pressure and had told no one else of his feelings, even though other Los Angeles County employees had been involved in the project.[7] He said that he had spoken personally to Jensen at that time, but could not recall any specifics of the conversation.[8] He told the Staff that Jensen had seemed "hopeful and anxious" [9] that Los Angeles would select DALITE. None of the other employees the Staff spoke to knew of any pressure placed on anyone to select DALITE.

The Staff was informed by Alameda County employees that DALITE was developed with LEAA grant money and is in the

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[1] Hamiliton, "The Basic Hypothesis," Redacted Version, February 2, 1989, at 1. At various times during its investigation, the Staff received allegations and pieces of information from Hamilton in telephone conversations, personal meetings, and written memoranda. On February 2, 1989, Hamilton compiled the information he had previously provided to the Staff into two written volumes, entitled "The Basic Hypothesis, Redacted Version," and "Detailed Summary of Facts and Authorities in Support of the Basic Hypothesis, Redacted Version." The redactions are the result of a Protective Order of the Bankruptcy Court which keeps certain, mainly financial, information confidential. These volumes are available in the files of the Subcommittee. For the reader's benefit, references in this Study to Hamilton's allegations to the Staff will be cited to Hamilton's written volumes, which will hereinafter be listed as Hamilton, "Basic Hypothesis" and Hamilton, "Detailed Summary."

[2] *Id.* at 3.

[3] *Id.* at 24.

[4] *Id.* at 25.

[5] *See* Section IIB of this Study for the results of the Staff's investigation of the allegations concerning Hadron, Inc.

[6] *Id.* Staff interview of Larry Donoghue, June 2, 1988.

[7] *Id.* Staff interview of Larry Donoghue, June 6, 1988.

[8] *Id.*

[9] *Id.*

public domain; therefore, the software would have been available to anyone who asked for it. The Staff discovered no information to suggest that Jensen could have profited financially from the selection of DALITE by Los Angeles County, or that he was harmed financially when Los Angeles selected PROMIS.[10]

One Los Angeles County employee, who had travelled to Alameda County with a group of other employees to receive a briefing on the DALITE system, recalled that Jensen and his employees had been proud of the system, but that there has been "absolutely no pressure for Los Angeles to go with DALITE." [11] That employee told the Staff that because DALITE was written by Alameda County employees, there would be no one to install and run it in Los Angeles; therefore, Los Angeles had to find a contractor-installed and operated system.[12] This was one of the major reasons which led Los Angeles County to select PROMIS.

The Staff notes, however, that the Bankruptcy Court made a number of Findings of Fact concerning Jensen's opinions as to the relative merits of DALITE and PROMIS. The Court found that Jensen thought early versions of DALITE to have been superior to the early versions of PROMIS,[13] and that Jensen also thought that it had been a mistake for the EOUSA to adopt PROMIS for nationwide dissemination when DALITE was available.[14] The Bankruptcy Court also found that in 1981, Jensen told Associate Deputy Attorney General Stanley Morris of his lack of enthusiasm for installing PROMIS in the 20 largest U.S. Attorney's offices.[15]

This was in apparent contrast to the approach taken by former Deputy Attorney General Rudolph Giuliani during the time he was Chairman of the PROMIS Oversight Committee. Kevin Rooney, former Assistant Attorney General for Administration, and a PROMIS Oversight Committee member, told the Staff that Giuliani had been enthusiastic about the progress made in installing PROMIS in the larger officers, and had not been as concerned about problems being encountered in the smaller offices.[16] Rooney stated that when Jensen took over the problems with the smaller offices were much more accentuated—Jensen "looked at the glass as half empty rather than half full." [17]

Rooney told the Staff that in late December 1983, after INSLAW had encounterd a number of problems with the Department concerning its fees, INSLAW's attorneys met with him to seek some sort of amicable resolution. As a result of this meeting, Rooney felt he had reached an accommodation with INSLAW, and he reported on his meeting to a session of the PROMIS Oversight Committee chaired by Jensen, on December 29, 1983. Rooney told the Staff that he could not remember what transpired during the meeting

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[10] *Id.* Both the pilot research program conducted by Alameda County, and the development of the DALITE system itself were funded by the State of California through grant money provided from the LEAA. Staff Interview of Donald G. Ingraham, Assistant District Attorney, Alameda County, California, May 31, 1988.

[11] Staff interview of Florence Linn, June 8, 1988.

[12] *Id.*

[13] Adversary Proceeding Finding of Fact No. 308.

[14] Adversary Proceeding Finding of Fact No. 307.

[15] Adversary Proceeding Finding of Fact No. 309.

[16] Staff interview of Kevin Rooney, May 5, 1988.

[17] *Id.*

following his presentation, and stated that he may well have left the meeting early. Despite Rooney's presentation of his agreement with INSLAW, Jensen, at the urging of Brewer and his staff, approved a decision to terminate the PROMIS contract for cause.[18] After the Department's Administrative Counsel issued a legal opinion that the Department lacked sufficient grounds upon which to terminate the contract for cause, the word processing portion of the INSLAW contract was subsequently cancelled for the "convenience of the government."[19] The Staff found no proof, though, that Jenssen's actions in this regard were the result of any conspiracy between Jensen and Brewer, or anyone else.

The Staff does note, however, that in July 1983, five months prior to the termination decision, Peter Videnieks, the Department's Contracting Officer for the PROMIS contract, sent INSLAW a letter notifying it that the Department was suspending payments to INSLAW of almost a quarter of a million dollars.[20] Videnieks' letter listed Jensen as the first "cc," indicating that Videnieks sent a copy of the letter to Jensen. Videnieks testified during the Adversary Proceeding that he had never met Jensen and he could not explain why he had copied Jensen on a payment suspension notice when he had not even copied his own immediate supervisor.[21]

The Staff also notes that in a sworn affidavit submitted to the Bankruptcy Court in connection with the Adversary Proceeding, Hamilton stated that in 1983, William Tyson, the Director of the EOUSA, told him that Brewer "was not INSLAW's only problem."[22] According to Hamilton's affidavit:

> Mr. Tyson went on to explain that there was a 'presidential appointee in the current administration' who was so antagonistic to PROMIS and INSLAW that the very survival of the nationwide PROMIS installation project was in jeopardy. Mr. Tyson said further that he had had to maneuver to keep the unnamed 'presidential appointee" away from meeting of the United States attorneys in order to keep the 'presidential appointee' from poisoning the well for the PROMIS project.[23]

On March 29, 1987, *The Washington Post* ran a story on the INSLAW case which quoted from Hamilton's affidavit concerning Tyson's statements.[24] That same day Tyson wrote a letter to Jensen which stated:

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[18] Rooney told the Staff that he had been surprised when he learned of this decison, but stated that he had the impression that it was not inconsistent with his agreement with INSLAW's attorneys. According to Rooney, if INSLAW could not show the Department good cause why the word processing portion of the contract should not be terminated (which Rooney equated with the proposal of INSLAW's attorney's, to which he had agreed), then it would lose that part of the contract. Rooney did tell the Staff, however, that he had felt very uncomfortable with the Oversight Committee's decision.

[19] See discussion in Section IA, pp. 5–6.

[20] Letter to INSLAW, Inc., ATTN: W.A. Hamilton, from Peter Videnieks, Contracting Officer, Justice Managment Division, Department of Justice, July 18, 1983.

[21] Adversary Proceeding Record at 1869–1871; Adversary Proceeding Finding of Fact No. 313. In a sworn deposition before the Staff, Videnieks was again unable to recall why he had copied Jensen on this letter. Deposition of Peter Videnieks Before the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs, August 9, 1988.

[22] Affidavit of William Hamilton, *INSLAW, Inc.* v. *United States,* Adversary Proceeding No. 86-0069 (Bankr. D.D.C.).

[23] *Id.*

[24] "Justice Embroiled in Database Suit," *The Washington Post,* March 29, 1987, p. H1.

> I did not make the comments which Mr. Hamilton says I made. They are sheer invention on his part. I want you to know this because it appears that he is trying to show that these statements, which I did not make, referred to you . . . I have denied under oath in a deposition this week having made the comments he claims I made and I will continue to make such denials in any future proceedings.[25]

Tyson sent a copy of this letter to Deputy Attorney General Arnold Burns on May 29, 1987.

In a deposition conducted by INSLAW's attorneys on June 15, 1987, Tyson again stated that he did not recall making such statements to Hamilton;[26] however, he did admit that he had spoken with EOUSA Deputy Director Lawrence McWhorter about a presdiential appointee who was biased against INSLAW and the PROMIS program.[27] In his deposition Tyson identified this "presidential appointee" as the U.S. Attorney for the Western District of Michigan, John Smietanka.[28]

Although these incidents raise some questions as to the role played by Jensen with respect to INSLAW, the Staff does not believe that they provide proof of any involvement by Jensen in a conspiracy against INSLAW. If anything, they are consistent with the Bankruptcy Court's findings concerning Jensen's alleged bias against INSLAW.[29] Although such bias, to the extent it existed, may have led Jensen, as the Bankruptcy Court found, to be indifferent to INSLAW's compliants about other Department officials, it does not, absent further evidence, translate into participation in a broad conspiracy to cripple INSLAW for the benefit of Jensen or other Department of Justice officials. The Staff found no such further evidence, not did it find any evidence to suggest that Jensen would have personally benefitted from INSLAW's demise. The Staff further notes that the Bankruptcy Court was never presented with allegations, nor did it make any findings, that Jensen had engaged in, or helped to further, any conspiracy against INSLAW.

B. The Staff Found No Proof That Officials of Hadron, Inc. Were Involved in a Conspiracy With Officials of the Department of Justice To Undermine INSLAW in Order to Acquire Its Assets

Hadron, Inc. is a Fairfax, Va. computer services corporation. One of its major shareholders is Dr. Earl W. Brian,[30] a former member

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[25] Letter to Hon. D. Lowell Jensen, from William Tyson, March 29, 1987.

[26] Deposition of William P. Tyson, *INSLAW, Inc.* v. *United States,* Adversary Proceeding No. 86-0069 (Bankr. D.D.C., June 15, 1987, at 149-152.

[27] *Id.* at 142-149.

[28] *Id.* at 145-146.

[29] Adversary Proceeding Findings of Fact Nos. 307-332 are listed under Heading X, "Jensen's Biased Attitude Against INSLAW and His Indifference to INSLAW's Repeated Complaints of Misconduct by Other DOJ Officials.

[30] In its Form 10-K filed with the Securities and Exchange Commission for the fiscal year ending March 31, 1983, Hadron listed Earl Brian as controlling, directly or indirectly, 8.7 percent of Hadron's outstanding common stock. In succeeding years, Hadron's 10-K's listed Brian's beneficial ownership as 7.6 percent for the fiscal year ending March 31, 1984, 7.9 percent for the fiscal year ending March 31, 1985, 7.7 percent for the fiscal year ending March 31, 1986, and 7.7 percent for the fiscal year ending March 31, 1987. During each of those years no person other than Brian owned beneficially more than 5 percent of Hadron's outstanding common stock.

of the California state cabinet during President Reagan's tenure as Governor. Brian is also reported to be a personal friend of former Attorney General Edwin Meese.

Hamilton alleged to the Staff that:

> On April 20, 1983, Dominic Laiti, Chairman of Hadron, Inc., telephoned Hamilton to seek to buy INSLAW . . . Laiti said Hadron wanted to buy INSLAW in order to get the PROMIS software, and that Hadron had the political contacts at the highest level of the Reagan Administration necessary to obtain the federal government's case management software business once Hadron acquired PROMIS. At the time of the Laiti overture, the Meeses owned $15,000 of stock in Biotech Capital Corporation, which controls Hadron, Inc. Dr. Earl Brian heads Biotech Capital Corporation, currently known as Infotechnology, Inc.[31]

Hamilton also told the Staff that Laiti told him that Hadron intended to become the dominant vendor of software for law enforcement and courts nationwide, and that it had recently purchased Simcon (a law enforcement software company) and Acumenics Research, Inc. (a litigation support services company) to that end.[32] Hamilton told the Staff that when he turned down Laiti's offer, Laiti replied "we have ways of making you sell." [33] Hamilton told the Staff that Paul Wormeli, a former officer of a Hadron subsidiary, Simcon, could confirm Laiti's 1983 interest in INSLAW.[34]

According to Hamilton, within 3 months of the call by Laiti, the Department of Justice raised a number of disputes relating to payment of various of INSLAW's fees.[35]

The Staff interviewed Dominic Laiti, Paul Wormeli, and Donald H. Stromberg, Simcon's former president. Earl Brian has publicly denied any participation in any plan to undermine INSLAW.[36]

Laiti flatly denied to the Staff ever having Mr. Brian contact Mr. Meese or others at DOJ for any reason.[37] He denied knowledge of Mr. Brian acting illegally or improperly at any time.[38]

Laiti told the Staff that in 1983, Hadron was looking for acquisitions and stated that it is possible that if INSLAW had come to his attention he very likely may have placed a call to see if it was available for acquisition.[39] If he had been rebuffed, however, Laiti stated he would have dropped the matter.[40] Laiti said he did not

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[31] Hamilton, "Basic Hypothesis," at 3-4.

[32] Staff interview of William Hamilton, November 13, 1987.

[33] *Id.*; Hamilton, "Basic Hypothesis" at 29.

[34] Staff telephone conversation with William Hamilton, March 1988.

[35] Staff telephone conversation with William Hamilton, November 13, 1987; Hamilton, "Basic Hypothesis" at 29-35.

[36] In response to a "CBS Evening News" report on May 6, 1988, which had reported that the Subcommittee was investigating Brian's possible involvement in the INSLAW matter, Brian told CBS through a spokeswoman that he had never heard of INSLAW until news reports of the Bankruptcy Court's decision. Brian added that he had not spoken with Attorney General Meese in nearly five years, and said "to the best of my recollection, I have never even met Mr. Lowell Jensen. . . ." Brian's statements were reported on the "CBS Evening News" on May 10, 1988.

[37] Staff interview of Dominic Laiti, May 19, 1988.

[38] *Id.*

[39] *Id.*

[40] *Id.*

recall ever calling Hamilton.[41] Laiti denied ever threatening Hamilton with "we have ways of making you sell." [42]

Laiti maintained that he had no reason to try to force a purchase of INSLAW and that Hamilton's "plot" theory was "ridiculous." [43]

The former vice president of Simcon, Paul Wormeli, told the Staff that he did recall discussions with Laiti about INSLAW in 1983, and further recalled accompanying Laiti to New York in the fall of 1983 in an effort to raise venture capital.[44] Wormeli, however, did not know specifically what the capital was intended for.[45] Wormeli did recall that during the trip he and Laiti met with Brian; however, Wormeli could not recall the substance of the meeting.[46] Although Laiti could recall no such trip at the time of his interview by the Staff, he subsequently informed the Staff that the purpose of the trip was to attempt to raise capital for Simcon, not INSLAW, and that the attempt had been fruitless.[47]

Donald Stromberg, former President of Simcon, told the Staff that he had no reason to believe that Laiti had ever done anything illegal or improper.[48] Stromberg stated that during his time at Hadron he never heard INSLAW or Bill Hamilton mentioned by any of the employees or any members of the board of Hadron.[49]

No one the Staff talked with in the Department of Justice, including those officials responsible for the handling of the INSLAW contract, was aware of any contacts between Brian, Laiti, or Hadron and anyone in the Department. The Staff found no proof of any connection between Brian or Hadron and the Department with regard to the INSLAW contract.

C. The Staff Found No Proof That INSLAW's Problems With the Department Were Connected to the Department's "Project Eagle" Procurement

Hamilton alleged to the Staff that an "element of the Meese-Jensen plan was to trigger the demand within DOJ for the award of a PROMIS case management software and service contract." [50] According to Hamilton, this plan called for the purchase of "hundreds of millions of dollars of new computers especially equipped to be able to run PROMIS," and the Meese-Jensen plan was to "award a massive sweetheart contract to Hardon." [51]

In May 1986, the Department issued a Request for Proposal (RFP) for Project Eagle, a Department-wide office automation program. According to the Department, the only connection between that procurement and the PROMIS software is that the computers acquired through PROJECT EAGLE must be able to access the current PROMIS case management program.[52] The EAGLE system

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[41] *Id.*
[42] *Id.*
[43] *Id.*
[44] Staff interview of Paul Wormeli, April 29, 1988.
[45] *Id.*
[46] *Id.*
[47] Letter to Permanent Subcommittee on Investigations, from John A. Mintz, Esq., Gibson, Dunn & Crutcher, attorney for Dominic Laiti, May 26, 1988.
[48] Staff interview of Donald Stromberg, May 19, 1988.
[49] *Id.*
[50] Hamilton, "Basic Hypotheses" at 14.
[51] *Id.* at 4.
[52] Department of Justice briefing on Project Eagle, May 24, 1988.

must also be able to access and manipulate data in six other case management programs in use in various divisions in the Department.[53]

According to the Department, neither INSLAW, Hadron, nor its subsidiary, Acumenics, were bidders on Project Eagle.[54]

This issue is mired in the litigation. Should the courts find that the PROMIS software is in the public domain, that is, not the proprietary property of INSLAW, then the issue is moot. However, should the courts hold that the software belongs to INSLAW, then a problem may be encountered by the Department's use of the PROMIS software in connection with Project Eagle.

D. The Staff Found No Proof That AT&T Information Systems Participated, Wittingly or Unwittingly, in an Effort To Undermine INSLAW's Reorganization Efforts

Hamilton alleged that AT&T Information Systems ("AT&T) engaged in a conspiracy with the Department of Justice, wittingly or unwittingly, to drive INSLAW out of business. Hamilton said he was "not clear what AT&T bargained for in exposing itself to . . . civil liability, and potentially damaging adverse publicity by helping Messe and Jensen in their effort to steal the PROMIS software from INSLAW for Hadron," [55] but said it was possible that AT&T did so "to be awarded the Project Eagle contract to supply several hundred million dollars of computers to DOJ." [56]

Hamilton charged that AT&T breached the automatic stay provisions of the bankruptcy law by failing to abide by its previous contractual agreements with INSLAW, and then, after falsely posturing itself as a major creditor of INSLAW, won appointment [57] by the U.S. Trustee to INSLAW's Unsecured Creditors Committee. According to Hamilton, AT&T then hired Kenneth Rosen of the West Orange, New Jersey, law firm Ravin, Sarasohn, Cook, Baumgarten & Fisch ("Ravin, Sarasohn"), as well as the law firm of Shea & Gould "to assist in the completion of the Messe-Jensen plan to force the PROMIS software out of INSLAW's control and into the control of Hadron, Inc." [58] Hamilton further alleged that Shea & Gould is the merger and acquisition counsel for Earl Brian and Hadron, Inc.[59]

Hamilton pointed out that Rosen had been a colleague of Harry Jones in the U.S. Trustee's Office in New York in 1982, and that he remained a close social friend of Jones.[60] He also alleged that Rosen had been a member of former Deputy Attorney General Arnold Burns' New York law firm, Burns, Summit, Rovins & Feldesman, until late 1984, and that it was Burns who had "recruited [Rosen] for the job of representing [AT&T] in the INSLAW bankruptcy." [61]

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[53] *Id.*
[54] *Id.* The Department recently awarded the Project Eagle contract to Tisoft, Inc., of Fairfax, Virginia. Tisoft had previously developed the Department's Amicus case management system.
[55] Hamilton, "Basic Hypothesis" at 12.
[56] *Id.*
[57] *Id.* at 44, 48.
[58] *Id.* at 44.
[59] *Id.*
[60] *Id.* at 48.
[61] Hamilton, "Detailed Summary" at B-31.

In an Application filed with the Bankruptcy Court on January 19, 1988, Hamilton stated that in November 1987, he called Victor Abrunzo, a former colleague of Rosen's in the U.S. Trustee office.[62] Hamilton told Abrunzo that he had inferred from a number of circumstances that Rosen had been working in concert with officials of the Department, and that he was interested in learning who in the Department had recruited Rosen into the INSLAW case.[63] According to Hamilton Abrunzo first told him to research the Martindale-Hubbell Legal Directory for the answer.[64] When Hamilton said that he had and that Rosen was listed as an associate in the Ravin, Sarasohn firm, Abrunzo allegedly said this was wrong and that Hamilton's research had not been thorough enough.[65] Hamilton said that Abrunzo subsequently volunteered that Rosen had held two jobs since leaving the Department, and then said: "I've already told you too much." [66]

Hamilton said that later in the conversion Abrunzo told him of a conference he had attended on the expansion of the U.S. Trustee program which had been "chaired by an attorney named Burns, of Burns, Summit." [67] When Hamilton asked whether this was Deputy Attorney General Arnold Burns, Abrunzo allegedly replied that it was "one and the same person." [68]

Notwithstanding the statements Hamilton attributed to Abrunzo, the Staff found no proof to support the view that AT&T hired Rosen as part of a plan, in conjuction with the Department of Justice or anyone else, to prevent INSLAW from successfully reorganizing.

Although Abrunzo admitted in a deposition conducted by INSLAW's attorneys that he had made the kinds of statements attributed to him by Hamilton, he claimed that he had been only joking, trying to show Hamilton the absurdity of his theory.[69]

AT&T cooperated fully with the Staff's inquiry of Hamilton's allegations. The Staff met with AT&T litigation attorneys, reviewed AT&T corporate documents and interviewed three AT&T employees who had been directly involved in AT&T's business dealings with INSLAW.

During its investigation of these allegations, the Staff found no information to suggest that AT&T, its employees, or counsel were involved in a conspiracy against INSLAW.

AT&T provided the Staff with evidence which gave an historic perspective of its relationship with INSLAW. The Staff found nothing to suggest that AT&T took improper action in its dealings with INSLAW in order to undermine INSLAW's reorganization efforts. In fact, AT&T disclosed information to the contrary—information

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[62] Application for an Order Authorizing Examination of Persons and Documents Pursuant to Bankruptcy Rule 2004, *In re:INSLAW, Inc.,* Case No. 85-00070 (Bankr. D.D.C.) at 7.

[63] *Id.*

[64] *Id.*

[65] *Id.*

[66] *Id.*

[67] *Id.*

[68] *Id.*

[69] Deposition of Victor D. Abrunzo, Jr. *INSLAW, Inc.* v. *United States,* Adversary Proceeding No. 86-0069 (Bankr. D.D.C.),. January 5, 1988, at 44-52.

which INSLAW had at their disposal but, through design or neglect, failed to impart to the Staff.[70]

Kenneth Rosen told the Staff that he had worked in the U.S. Trustee's Office in New York from December 31, 1981 to May 1982.[71] Rosen then worked in the Burns, Summit law firm from May 1982 to February 1984, and at the Ravin firm from February 1984 to present.[72]

Harry Jones, an Assistant U.S. Trustee in the New York office with Rosen, testified in a sworn Subcommittee deposition that he had never spoken about the INSLAW matter with Rosen and that he had never even known that Rosen had represented AT&T until being told of that fact in a deposition conducted by INSLAW's attorneys.[73]

Arnold Burns, in an interview with the Staff, denied that any plan between the Department and AT&T ever existed, and said that he wouldn't even recognize Rosen.[74] The Staff notes that Ravin, Sarasohn entered a notice of appearance on behalf of AT&T on February 8, 1985. Arnold Burns did not join the Department of Justice until January 1986.

AT&T told the Staff that Ravin, Sarasohn was hired at the recommendation of an AT&T attorney who knew name-partner David Ravin, and that Rosen was subsequently assigned to the case by Ravin, Sarasohn, not chosen by AT&T.[75] Furthermore, according to AT&T, it was Ravin, Sarasohn, not AT&T, that hired Shea & Gould to file court papers for Ravin.[76]

E. The Staff Found That the Director of the Executive Office for U.S. Trustees Improperly Sought Special Handling for INSLAW's Bankruptcy Proceedings in Order To Secure Continued Support for His Office From the Justice Department, a Party to the Proceedings

After a four-day trial, the Bankruptcy Court found that C. Madison Brewer, the Department's PROMIS Project Director, had discussed INSLAW's bankruptcy case with Thomas Stanton, the Director of the Executive Office for U.S. Trustees (the "EOUST").[77]

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[70] E.g., INSLAW failed to inform the Staff of a September 10, 1985 agreement between INSLAW and AT&T, which had superseded the contract that INSLAW claimed AT&T had breached. This subsequent agreement was brought to the Staff's attention by AT&T.

[71] Staff telephone conversation with Kenneth Rosen, January 5, 1989.

[72] *Id.*

[73] Deposition of Harold Jones Before the Senate Permanent Subcommittee on Investigations of the Committee on Governmental Affairs, September 2, 1988, at 43-44. Rosen was deposed by INSLAW's attorneys on May 14, 1987. During that deposition the following colloquy took place:

> Q. I will tell you for the record—maybe you know this, maybe you don't—that Mr. Rosen for a period of time represented AT&T as a creditor in the INSLAW bankruptcy. Did Mr. Rosen ever tell you that people in the Justice Department had an interest in putting INSLAW out of business? . . .
> A. Not that I recall, no . . .
> Q. Did he ever mention the INSLAW case or anything about INSLAW to you? . . .
> A. No . . .

Deposition of Harold Jones, *In re: INSLAW, Inc.*, File No. 85-00070 (Bankr. D.D.C.), May 14, 1987, at 27-28. *See* Deposition of Harold Jones Before the Permanent Subcommittee on Investigations, *supra* at 47-48.

[74] Staff interview of Arnold I. Burns, June 16, 1988.

[75] Staff interview of Joseph Lazaroff, General Attorney, AT&T, June 16, 1988.

[76] *Id.*

[77] Adversary Proceeding Finding of Fact No. 351(b). The Bankruptcy Court issued Findings of Fact and Conclusions of Law in the Independent Handling Proceeding on the same day as it

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As a result of this discussion the Court found that Stanton undertook to cause the conversion of INSLAW's bankruptcy proceedings by pressuring William White, the U.S. Trustee for the District of Columbia, to convert the case from a Chapter 11 reorganization to a Chapter 7 liquidation.[78] After White resisted Stanton's pressures, Stanton tried to get Cornelius Blackshear, at that time the U.S. Trustee for New York, to send Assistant U.S. Trustee Harry Jones to work on the INSLAW case.[79] The Court found that these actions were done in bad faith, and in wanton disregard of the law and the facts.[80]

Hamilton alleged that Stanton's pressure to have the INSLAW bankruptcy converted to a liquidation was part of a plan by the Department of Justice and AT&T to force INSLAW's liquidation in bankruptcy, thereby enabling others to purchase the PROMIS software at a liquidation auction.[81]

This was the only issue the Staff investigated which had been the specific subject of proceedings before the Bankruptcy Court. The Staff did so in order to determine whether, as Hamilton had alleged, the facts found by the Bankruptcy Court were perhaps only part of a broader conspiracy. The Staff found no proof that an effort to convert INSLAW's bankruptcy proceedings was conducted by individuals beyond those the Bankruptcy Court had found responsible. The Staff investigation did confirm, however, that Stanton attempted to secure special treatment for the INSLAW case in the U.S. Trustee's Office. There is conflicting evidence as to whether Stanton went so far as to suggest to the U.S. Trustee the conversion of the INSLAW reorganization to a liquidation proceeding. At the least, however, it is clear that Stanton urged special treatment for the INSLAW case and that he did so only because the Justice Department, his parent organization, was a party to the suite. Stanton saw the INSLAW case as a means of favorably impressing the Department and thus ensuring continued Departmental support for his office.

While such actions do not equate with the type of conspiracy that Hamilton has alleged, they were, as attempts to influence the handling of the case by the U.S. Trustee, clearly improper. The inability of the EOUST to remain neutral in a case where the Justice Department is a party suggests that there may be a need to remove such cases to a more neutral and independent forum.

Hamilton told the staff that Anthony Pasciuto, the former Deputy Director of the EOUST, had informed INSLAW of a plan to convert INSLAW's bankruptcy case.[82]

The Staff deposed Anthony Pasciuto, Harry Jones, and Thomas Stanton, and interviewed Judge Cornelius Blackshear and former U.S. Trustee William White.

In a sworn Subcommittee deposition, Pasciuto testified unequivocally that:

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issued its Findings of Fact and Conclusions of Law in the Adversary Proceeding, and incorporated them into Adversary Proceeding Finding of Fact Nos. 351(a)–(n) and 352.

[78] Adversary Proceeding Finding of Fact 351(d).

[79] *Id.*

[80] Adversary Proceeding Finding of Fact No. 351(m).

[81] Hamilton, "Basic Hypothesis" at 47.

[82] Hamilton, "Basic Hypothesis" at 59; Hamilton, "Detailed Summary" at D–12—D–13.

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(1) Alexandria Trustee William White had complained to him that Stanton had pressured White to take some sort of action with respect to INSLAW; [83]

(2) Cornelius Blackshear had stated in his presence that Stanton had pressured Blackshear to send Harry Jones to Washington to work on the INSLAW case; [84] and

(3) Cornelius Blackshear had stated to Pasciuto that he had recanted in order to "hurt less people." [85]

In an interview with the Staff, White recalled that Stanton had called him with complaints about how White's office was run, which included matters such as the lack of a receptionist in the attorney's waiting room, and other administrative issues.[86] White also related to the Staff one incident in which Stanton had called him in the midst of the *A.H. Robbins* bankruptcy case to complain about White's failure to keep Stanton informed of significant matters on the case.[87] According to White, Stanton had told him that he, Stanton, had a responsibility "to keep Justice informed." [88]

Aside from this incident, White could not recall any other instances of EOUST interference related to particular cases. White said that the EOUST had no authority to take action in particular cases, and that he could not think of any instances in which the EOUST either tried to get involved substantively in cases or told his office to take specific actions in particular cases.[89] White did say, however, that Stanton was constantly trying to curry favor with the "higher-ups" at the Department.[90]

White told the Staff that the first time he heard of INSLAW was when he received a phone call from Stanton asking for information on the case and a complete set of pleadings.[91] According to White, Stanton indicated that there was a great deal of interest in the Justice Department about the INSLAW case.[92] White said that he made some phone calls, got some preliminary information on the case, and reported back to Stanton.[93]

White maintained to the Staff that Stanton had never discussed either the conversion, liquidation, or dismissal of the INSLAW case with him.[94] He further stated that he had never heard from anyone in any quarter of the Justice Department about the conversion of INSLAW's case.[95] White stated that he never would have filed a cavalier motion for conversion with Judge Bason because Bason was an "extremely pro-debtor judge." [96] White, however,

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[83] Deposition of Anthony Pasciuto Before the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs, July 15, 1988, at 55–59; Pasciuto Exhibit No. 1 at 1. Pasciuto denied, however, that he had told the Hamiltons that White had complained to him about being pressured to "convert" INSLAW's bankruptcy case. *Id.* at 109, 161.

[84] *Id.* at 63–67; Pasciuto Exhibit No. 1 at 1.

[85] *Id.* at 73–76; Pasciuto Exhibit No. 1 at 4–5.

[86] Staff interview of William White, May 26, 1988. The Staff's interview of White was conducted over the course of two separate days, May 26, 1988, and June 7, 1988.

[87] *Id.*

[88] *Id.*

[89] *Id.*

[90] *Id.*

[91] *Id.*

[92] *Id.*

[93] *Id.*

[94] *Id.*

[95] *Id.*

[96] *Id.*

could not explain certain of his handwritten notes which contained the phrase: "Possible conflicts: > conversion vis-a-vis rest of Justice > trustee (friend of Justice)." [97] Mr. White could not remember from whom he had received the information that was reflected in these notes, nor could he recall what the notes meant.[98]

In a sworn Subcommittee deposition, Stanton denied ever taking any action to convert INSLAW's bankruptcy case, or ever being asked by anyone in the Department to take action against INSLAW.[99] Stanton did admit, though, that he had attempted to bring Harry Jones, an Assistant U.S. Trustee, down from New York to work on the INSLAW case.[100] Stanton testified that he had wanted Jones, whom he felt was an expert in Chapter 11 matters, to handle the case in order to ensure that the Trustee program "look good." [101] The Trustee program, which had been created as a pilot program, was very fragile politically at that time, and Stanton had wanted the program to 'shine" in the INSLAW case in order to ensure the continued backing of his parent organization, the Department of Justice.[102] Stanton testified that:

> . . . my concern about the INSLAW case was that it was going to get very close attention in the Department and I wanted it to be done right. I didn't want somebody coming back and saying that we had screwed it up and, because we had screwed it up we weren't a good operation.[103]
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> * * * * *
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> I wanted the Trustee program to get approved by the Department, I wanted it to be nationwide, you know, these are the things the goals, you know, and that was one of the reasons why I wanted Harry Jones, because he would look good and make us look good, you know, it is just like inspection day, you all look good.[104]

Stanton said he had talked with Blackshear about sending Jones to Washington, D.C. to work on the INSLAW case, but quickly dropped the idea when Blackshear indicated that he couldn't spare Jones.[105] Stanton further said that he did not discuss the matter with either White or Pasciuto.[106]

White told the staff that he had learned from Blackshear about Stanton's efforts to assign Jones to the case.[107] White said that he had not heard of Stanton's desire to "get the case off on the right foot," but he speculated that Stanton's desire to assign Jones to the case was really an attempt to "curry favor with the higher-ups.[108]

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[97] *Id,*. referring to two-page, handwritten, undated notes of William White.
[98] *Id.*
[99] Deposition of Thomas Stanton Before the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs, September 7, 1988, at 158.
[100] *Id.* at 158, 171-176.
[101] *Id.* at 158, 161.
[102] *Id.* at 189-191.
[103] *Id.* at 165.
[104] *Id.* at 180.
[105] *Id.* at 171-176.
[106] *Id.* at 176, 201.
[107] Staff interview of William White, May 26, 1988.
[108] Staff interview of William White, June 7, 1988.

White stated that he believed that the INSLAW case was not a significant bankruptcy case; he felt that it could have been handled by a paralegal.[109] He certainly did not feel that he needed additional help on the case.[110] White stated that he had considered Stanton's effort to assign Jones to the case to be improper because White had thought that Jones would be working out of the EOUST.[111] White could not recall, however, what had led him to the impression that Jones would be working out of the EOUST.[112]

Stanton testified before the Staff that his main concern about the INSLAW case was that all the technical aspects of the case be handled correctly;[113] however, he never discussed this concern with White prior to contacting Blackshear.[114] Indeed, White told the Staff that he had not known of Stanton's concerns in this regard.[115] Similarly, in his first deposition before INSLAW's attorneys, Blackshear did not include a concern for the technical aspects of the INSLAW case as being among Stanton's reasons for requesting Jones' assignment to the case.[116] White did recall, though, that Blackshear had called him at home one night to discuss the possibility of their both resigning to protest Stanton's action with respect to Jones.[117] White also told the Staff that the reason he had added language to a confidentiality order prohibiting access to the INSLAW documents to any Department employees not specifically working in the Alexandria Office, was in order to "protect" Jones—i.e., to make sure that Jones could not work on the INSLAW case.[118]

F. The Staff Found Judge Blackshear's Recantation, When Considered in Light of All the Facts, To Be Implausible

In a bench ruling on the Independent Handling Proceeding on June 12, 1987, the Bankruptcy Court stated with regard to Blackshear's recantion as follows:

> . . . because Judge Blackshear's original testimony is in accord with the other credible evidence, and his recantation is not, this Court accepts as true Judge Blackshear's original testimony and holds that his recantation is the result of an honest mistake on his part.[119]

After interviewing Blackshear, White, and a number of other individuals concerning Blackshear's recantation, the Staff concluded

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[109] *Id.*
[110] *Id.*
[111] Staff interview of William White, May 26, 1988.
[112] *Id.*
[113] Deposition of Thomas Stanton Before the Permanent Subcommittee on Investigations at 168.
[114] *Id.* at 176.
[115] Staff interview of William White, June 7, 1988.
[116] Deposition of Hon. Cornelius Blackshear, *In re INSLAW, Inc.*, Bankruptcy Case No 85-00070 (D.D.C.), March 25, 1985, at 8.
[117] Staff interview of William White, May 26, 1988.
[118] Staff interview of William White, June 7, 1988. In a sworn deposition conducted by INSLAW's attorneys subsequent to his recantation, Blackshear also testified that one of the reasons White had had the restrictive language added to the confidentiality order was to "protect" Jones. Deposition of Hon. Cornelius Blackshear, *In re INSLAW, Inc.*, Bankruptcy Case No. 85-00070 (Bankr. D.D.C.), May 22, 1987, at 58, 61.
[119] Independent Handling Proceeding Record at 1026.

that Blackshear's explanation as to why he recanted was inconsistent with facts uncovered in this investigation.

On four separate occasions, including a conversation with another judge, two conversations with INSLAW's attorneys, and a sworn deposition, Blackshear told a story totally consistent with what Hamilton said Pasciuto had told the Hamiltons in March 1987.[120] On those occasions, Blackshear stated that White had complained to him about pressure from Stanton to convert INSLAW's bankruptcy case.[121] He further stated that after White had refused Stanton's requests, Stanton had attempted to bring Jones down to work on the matter.[122]

On March 25, 1987, Blackshear repeated these statements in a sworn deposition conducted by INSLAW's attorneys. Within a half hour of completing his deposition, Blackshear received a telephone call from White.[123] Blackshear told the Staff that after talking with White over the course of the next two days he realized that he had confused the INSLAW case with the *UPI* case.[124] Blackshear stated that he subsequently executed an affidavit recanting his deposition testimony in which he stated that White had complained about pressure from Stanton to convert INSLAW.[125] In his affidavit Blackshear stated that White had discussed receiving pressure from the Internal Revenue Service (the "IRS") to convert the *UPI* case.[126]

The Staff found Blackshear's explanation of the reasons for his recantation to be implausible. Blackshear told the same story four times—a very fact-specific story which, unbeknownst to Blackshear, was entirely consistent with the testimony of Pasciuto. It was only after talking with White, who had testified previously in an inconsistent manner (again unknown to Blackshear), that Blackshear then suggested that he had been confusing the INSLAW case with an entirely different case which consisted of an entirely different set of facts and participants.

Furthermore, some of the statements Blackshear made in his recantation are inconsistent with the facts. Blackshear, in his recan-

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[120] On March 18, 1987, Blackshear spoke with Judge Jane S. Solomon of the Civil Court of the City of New York; on March 20, 1987, Blackshear spoke with Charles Docter, INSLAW's bankruptcy counsel; and on March 24, 1987, Blackshear spoke with Docter, Michael Lightfoot, and Brian O'Neill, counsel for INSLAW. On March 25, 1987, Blackshear provided sworn testimony in a deposition conducted by INSLAW's attorneys. The Staff interviewed Judge Solomon on April 18 & 20, 1988, and received from her a copy of her contemporaneous handwritten notes of her conversation with Blackshear. The Staff also received from INSLAW copies of the contemporaneous handwritten notes of Messrs. Docter, O'Neill, and Lightfoot of their conversations with Blackshear.

[121] Judge Solomon told the Staff that her notes of her conversation with Blackshear reflected the following: "Stanton supposed to have ordered D.C. trustee to convert to 7." Staff interview of Hon. Jane Solomon, April 20, 1988. Docter's notes reflect that Blackshear had stated to him that "Bill White was being pressured to file a motion to convert." Notes of Charles Docter, March 20, 1988. Lightfoot's notes reflect that Blackshear had stated that "Tom was pressing to have the case converted to Chapter 7." Memorandum to the INSLAW File, from Brian O'Neill, March 27, 1988.

[122] Judge Solomon told the Staff that her notes reflected that "Neil asked to send Harry J. to D.C. on INSLAW case." Staff interview of Judge Jane Solomon, April 20, 1988. O'Neill's notes reflect that "Tom was going to ask for Harry." Memorandum to the INSLAW File, from Brian O'Neill, March 27, 1988.

[123] Staff interview of Hon. Cornelius Blackshear, May 2, 1988; Deposition of Hon. Cornelius Blackshear, *In re INSLAW, Inc.*, Case No. 85-00070 (Bankr. D.D.C.), May 22, 1987, at 33.

[124] *Id.* See also Deposition at 38.

[125] *Id. See also* Deposition at 70-71.

[126] Affidavit of Hon. Cornelius Blackshear, *In re INSLAW, Inc.*, Case No. 85-00070 (Bankr. D.D.C.), March 26, 1987.

tation, said that White had complained to him about pressure he had received to convert the *UPI* case.[127] White, however, told the Staff that he had never been pressured to covert the *UPI* case.[128] Individuals within both the IRS and the Department of Justice Tax Division, which is the unit which represents the IRS, stated to INSLAW that their respective offices had never attempted to have the *UPI* case converted.[129]

Blackshear also told the Staff that one of the reasons he was sure that he had confused INSLAW with the *UPI* case was that both he and White had spoken at an American Bar Association (the "ABA") conference in 1986 about the independence of the Trustee program and that they had each used the *UPI* case as an example of how U.S. Trustees could resist pressures upon them from other units of Department of Justice.[130] When the Staff asked White about his participation in the ABA conference he stated that he had not talked about the *UPI* case at the conference.[131] He further stated that he had not even discussed the independence of the U.S. Trustee's office; rather he said he had spoken about the *A.H. Robbins* case as an example of how to organize a large case.[132]

More significantly, the Staff obtained official tape recordings of the conference session during which Blackshear made his own presentation. At no time during his presentation did Blackshear mention the *UPI* case.[133] The Staff believes that these facts, taken together, severely undercut the credibility of Blackshear's recantation.

G. The Staff Found No Proof That INSLAW's Attorney Was Dismissed by Dickstein, Shapiro & Morin Because of Pressures From the Department of Justice

In February 1986, INSLAW retained the Washington, D.C. law firm of Dickstein, Shapiro & Morin ("Dickstein, Shapiro") to repre-

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[127] *Id.*

[128] Staff interview of William White, May 26 and June 7, 1988.

[129] On March 31, 1987, William Hamilton spoke with Thomas C. Morrison, former I.R.S. District Counsel for Washington, D.C., whose office had been responsible for the *UPI* case. According to Hamilton, Morrison told him that no pressure had been applied to liquidate UPI while he had headed the office. Memorandum for the Record, from Bill Hamilton, March 31, 1987. On March 26, 1987, Charles Docter, INSLAW's bankruptcy counsel, spoke with Stuart Fishbein, an attorney in the Department of Justice Tax Division, who told Docter that he had been the Tax Division attorney for the *UPI* case. According to Docter, Fishbein told him that there may have been some talk about converting the *UPI* case in the early days of the case, but that it was not serious, and no effort was ever really made to convert it. Memo to the File, from Charles Docter, Esq., Docter, Docter & Salus, March 27, 1987.

[130] Staff interview of Hon. Cornelius Blackshear, May 2, 1988.

[131] Staff interview of William White, May 26, 1988.

[132] *Id.Id.*

[133] *The U.S. Trustee System: Fast-Fading Experiment or Nationwide Expansion?,* Tape No. 08A-267-86, Eleventh Annual Spring Meeting, American Bar Association Section of Corporation, Banking, and Business Law. The Staff also contacted Nathan Feinstein, Chairman of the SBA's Chapter 11 Subcommittee, and Lawrence Coppel, the Chapter 11 Subcommittee Secretary, in an effort to ascertain what Blackshear and White had discussed at the ABA conference. Feinstein's name had been given to the Staff by Blackshear, and White had discussed the *UPI* case at the conference. Feinstein told the Staff that he had asked White to discuss, and White did discuss, the *A.H. Robbins* case. Feinstein said that he could recall no mention of either the *UPI* case or the INSLAW case during any of the conference's meetings. Staff interview of Nathan Feinstein, May 9, 1988. Coppel told the Staff that he was relatively sure that White had discussed the *A.H. Robbins* case, and that he had focused on the special administrative procedures for a case of that magnitude. Coppel could not recall any discussion or mention of either the *UPI* case or the INSLAW case, nor any discussion of converting cases from Chapter 11 to Chapter 7, by either White or Blackshear. Staff interview of Lawrence Coppel, May 9, 1988.

sent it for purposes of pursuing litigation against the Department of Justice.[134] The attorney in charge of INSLAW's litigation was Leigh Ratiner, who had been a Dickstein, Shapiro partner for 10 years.

On October 10, 1986, the Dickstein, Shapiro Senior Policy Committee voted to request that Ratiner withdraw from the partnership, in essence dismissing him from the firm.[135] In February 1987, Dickstein, Shapiro withdrew as counsel to INSLAW.[136]

Hamilton alleged that Ratiner had been asked to withdraw from Dickstein, Shapiro, and that the firm itself had withdrawn as counsel to INSLAW, because the INSLAW suit threatened the firm's relationship with the Department.[137] To support his allegation Hamilton pointed to the following:

> (1) Ratiner's original draft complaint in the INSLAW litigation had contained 54 references relating to Jensen. This complaint had been replaced by a much shorter version containing only one reference to Jensen; [138]
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> (2) In response to an INSLAW interrogatory, the Department of Justice had stated that Attorney General Meese and Deputy Attorney Burns had had conversations with Dickstein, Shapiro partner Leonard Garment relating to the INSLAW case;[139]
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> (3) The Senior Policy Committee's decision to ask Ratiner to withdraw had been made during the same week as the publication of a *Los Angeles Times* article alleging an improper role in the INSLAW case on Jensen's part;[140]
>
> (4) Ratiner had told Hamilton that he had been informed by Dickstein, Shapiro's managing partner that Garment had been the prime mover in Ratiner's dismissal;[141]
>
> (5) Bill Farr, a reporter for the *Los Angeles Times* told Hamilton that Ron Ostrow, a reporter with the Washington bureau of the *Los Angeles Times,* had independently confirmed that Garment had instigated Ratiner's dismissal through Seymour Glanzer, a senior Dickstein, Shapiro partner, who is also a member of the Senior Policy Committee.[142]

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[134] *See* Application to Employ Dickstein, Shapiro & Morin as Counsel to Debtor, *In re: INSLAW, Inc.,* Case No. 85-00070 (Bankr. D.D.C.), February 12, 1986. INSLAW's retention of Dickstein, Shapiro was approved by the Bankruptcy Court on March 11, 1986.

[135] Staff interview of Frederick Lowther, September 9, 1988.

[136] The Bankruptcy Court issued an Order authorizing the withdrawal of Dickstein, Shapiro on February 17, 1987.

[137] Opposition to Amend Third and Final Application of Dickstein, Shapiro & Morin for Fees, *In re: INSLAW, Inc.,* Case No. 85-00070 (Bankr. D.D.C.), January 22, 1988, at para. 30 (hereinafter, Opposition at ——).

[138] Letter to Permanent Subcommittee on Investigations, from Nancy Hamilton, May 17, 1988.

[139] Defendant's Answers and Objections to Plaintiff's Third Set of Interrogatories and Fifth Request for Production of Documents, *INSLAW, Inc.* v. *United States,* Adversary Proceeding No. 86-0069 (Bankr. D.D.C.), July 16, 1987, at Answer to Interrogatory No. 6. Garment had represented Attorney General Meese in the 1984 investigation conducted by Independent Counsel Jacob Stein. Garment, however, was not working on the INSLAW case, nor had these conversations ever been reported previously by Garment to Ratiner or to INSLAW.

[140] Opposition at para. 11.

[141] Opposition at para. 13.

[142] *See* Opposition at para. 14.

The Staff interviewed Leigh Ratiner, former Deputy Attorney General Arnold Burns, former Associate Deputy Attorneys General Gregory Walden and Randy Levine, and Dickstein, Shapiro partners Sidney Dickstein, David Shapiro, Charles Morin, Frederick Lowther, Leonard Garment, Seymour Glanzer, and Richard Conway. After receiving a waiver of the attorney-client privilege from INSLAW, Dickstein, Shapiro provided the Staff with access to thousands of pages of documents pertaining to its representation of INSLAW, Ratiner's departure from the firm, and Dickstein, Shapiro's withdrawal as counsel to INSLAW. The Staff found no proof that Ratiner's departure from the firm, or the firm's withdrawal as counsel to INSLAW, was the result of any pressure from the Department of Justice.

Dickstein, Shapiro strenuously denied that the Department of Justice, or considerations relating to the Department of Justice, had anything to do with Ratiner's dismissal. The firm insisted that the decision to ask Mr. Ratiner to withdraw was based on problems he had had in developing his practice and other professional considerations. Similarly, the firm maintained that its decision to withdraw as counsel to INSLAW had been based on strictly professional considerations.

Ratiner himself told the Staff that he had no evidence that he had been asked to withdraw because of his pursuit of the INSLAW case; [143] however, he did speculate to the Staff that it was possible that the INSLAW case may have had something to do with it.[144] In particular, Ratiner informed the Staff of a number of incidents which he thought might be of some significance in this regard.

Ratiner told the Staff that during the initial drafting of INSLAW's complaint, a number of individuals in the firm had questioned the necessity of naming Jensen in the complaint.[145] In particular, Ratiner recalled two incidents involving Seymour Glanzer, a senior partner in the firm. According to Ratiner, the first incident occurred after Ratiner had circulated a copy of his initial draft complaint, which contained numerous references to Jensen. Ratiner recalled that Glanzer expressed a strong view that Jensen not be named and said, in words or substance, "you know we all have to practice law with the DOJ around here." [146] Ratiner also recalled an incident in which he saw Glanzer discussing the draft complaint with another partner at a meeting. Ratiner stated that Glanzer then turned to Ratiner and said "what the ——— (expletive deleted) are you doing this for?" [147]

Ratiner also told the Staff of a number of incidents that occurred after he had been asked to withdraw, which Ratiner said made him suspicious of the reasons for his dismissal.

Ratiner stated that he had a number of discussions with Dickstein, Shapiro managing partner Frederick Lowther during the course of negotiations over his severance agreement. According to Ratiner, during one of the discussions, Lowther told him, "you may

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[143] Staff interview of Leigh S. Ratiner, May 4, 1988. The Staff's interview of Ratiner was conducted over the course of two days, May 4 & 18, 1988.
[144] *Id.*
[145] *Id.*
[146] Staff interview of Leigh Ratiner, May 18, 1988.
[147] *Id.*

think it was [Dickstein, Shapiro partner David] Shapiro who got you, but it wasn't, it was Garment.[148]

Ratiner told the Staff that another Dickstein, Shapiro attorney asked him why he had gotten involved in holding up Jensen's confirmation as U.S. District Court Judge. Ratiner said that the attorney commented that Ratiner "never should have———(expletive deleted) with Jensen's confirmation." [149]

Ratiner said that in approximately January 1987, be received a call from *Los Angeles Times* reporter Bill Farr.[150] Farr was seeking to interview Ratiner about his dismissal. According to Ratiner, Farr told him that he had a high-level source within Dickstein, Shapiro who had said that Garment had instigated Ratiner's dismissal.[151] Ratiner said that Farr told him that this source was someone with impeccable integrity who had been present when the decision was made.[152] Ratiner told the Staff that after receiving this information from Farr, he related it to Fred Lowther along with his (i.e., Ratiner's) impression that the individual to whom Farr had been referring was Seymour Glanzer.[153] Ratiner said that he and Lowther then informed Glanzer of Ratiner's conversation with Farr and Ratiner's speculation that Glanzer was the source to whom Farr had made reference.[154] According to Ratiner, Glanzer responded, "If they had that story, they would have called to confirm it." [155]

Both Lowther and Glanzer denied the various incidents and statements attributed to them by Ratiner.[156] Bill Farr, the *Los Angeles Times* reporter, is since deceased. Ron Ostrow denied to the Staff that he had ever received any information indicating that Ratiner's dismissal was instigated by Garment.[157]

Garment denied playing any role in Ratiner's dismissal other than his usual obligations as a member of the Committee which made the decision.[158] The Staff interviewed every member of the Senior Policy Committee. Each member denied that Garment had in any way instigated the decision to seek Ratiner's withdrawal; indeed, each member said that Garment had not even participated to any great extent in the discussion of Ratiner during the Committee's meeting.[159] Garment, along with every other member of the Senior Policy Committee, also denied that anyone from the Department of Justice had attempted to influence the firm with respect to

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[148] *Id.*
[149] *Id.*
[150] *Id.*
[151] *Id.*
[152] *Id.*
[153] *Id.*
[154] *Id.*
[155] *Id.*
[156] Staff interview of Frederick Lowther, September 9, 1988. Staff interview of Seymour Glanzer, September 9, 1988.
[157] Staff telephone conversation with Ron Ostrow, *Los Angeles Times,* October 26, 1988. In connection with INSLAW's Objections to Dickstein, Shapiro's Proof of Claim, Dickstein, Shapiro filed with the Bankruptcy Court a sworn affidavit from Ron Ostrow in which Ostrow states ". . . neither Mr. Glanzer nor Mr. Garment, nor any other person at that firm, has ever stated or intimated to me that Mr. Garment instigated the request that Mr. Ratiner withdraw from DS&M." Affidavit of Ronald Ostrow, *In re: INSLAW Inc.,* Case No. 85–00070 (Bankr. D.D.C.), November 23, 1988.
[158] Staff interview of Leonard Garment, October 18, 1988.
[159] Staff interviews of Frederick Lowther, Seymour Glanzer, and David Shapiro, September 9, 1988; Staff interviews of Sidney Dickstein and Charles Morin, October 18, 1988.

Mr. Ratiner.[160] With respect to the Department's interrogatory response in which it stated that "Mr. Meese had a vague recollection of a conversation in which Mr. Garment mentioned that he had discussed INSLAW with Mr. Burns," Garment told the Staff that he could recall no conversations with Meese concerning INSLAW.[161]

Arnold Burns, however told the Staff that he did recall a conversation with Garment.[162] According to Burns, he had a social lunch with Garment in early October 1986.[163] Burns told the Staff that during the course of his conversation with Garment he (i.e., Burns) mentioned that the Department was involved in litigation over the INSLAW matter with Garment's law firm.[164] Burns said that he told Garment that he thought the Dickstein, Shapiro attorney involved, Ratiner, was handling the matter terribly and that he was practicing law through the press[165] and through the Congress rather than dealing with the Department directly.[166] Burns stated to the Staff that these comments were not meant as a criticism of Ratiner, but only as a way of telling Garment that his door was always open to the consideration of a settlement.[167] Garment could not recall this conversation.[168]

The Staff interviewed another Dickstein, Shapiro partner, Richard Conway, concerning Dickstein, Shapiro's withdrawal as counsel to INSLAW. Conway, a senior government contracts attorney, had been one of the principal litigators on behalf of INSLAW. Conway told the Staff that his initial impressions of INSLAW's case had changed in January 1987, when he learned that some of Hamilton's representations concerning INSLAW's data rights apparently were not true.[169] According to Conway, this severely undercut INSLAW's ability to prove that its enhancements to the PROMIS Program had been privately funded.[170]

Conway said that this development seriously altered his opinion as to the viability of INSLAW's litigation, and led him to recommend to INSLAW that it: (1) seek a settlement with the Department along lines proposed by Conway;[171] and (2) simultaneously obtain a postponement of its trial in order to allow time to restructure its case in the event settlement could not be reached.[172]

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[160] *Id.*, Staff interview of Leonard Garment, October 18, 1988.
[161] Staff interview of Leonard Garment, October 18, 1988.
[161] Staff interview of Aronld I. Burns, June 16, 1988.
[162] *Id.* The Staff's review of Garment's records revealed that this lunch took place on October 6, 1986, approximately one week before the Senior Policy Committee meeting at which the decision on Ratiner was made.
[164] *Id.*
[165] According to Ratiner, he was informed of the Senior Policy Committee's decision by Dickstein, Shapiro name partner Sidney Dickstein. Ratiner said that when he asked Dickstein why he was being asked to leave, Dickstein started talking about how Ratiner had been "practicing law through the newspapers." Staff interview of Leigh Ratiner, May 18, 1988.
[166] Staff interview of Arnold Burns, June 16, 1988.
[167] *Id.*
[168] Staff interview of Leonard Garment, October 18, 1988.
[169] Staff interview of Richard Conway, October 18, 1988. *See* Affidavit of Richard Conway, *In re: INSLAW, Inc.*, Case No. 85-00070 (Bankr. D.D.C.). Conway's affidavit was submitted in connection with INSLAW's Opposition to Dickstein, Shapiro's Proof of Claim. Much of the information Conway provided to the Staff is also contained in his affidavit.
[170] *Id.*
[171] Conway's conclusion as to what settlement would be appropriate was reflected in a letter to Hamilton from Dickstein, Shapiro on January 15, 1987.
[172] Staff interview of Richard Conway, October 18, 1988.

INSLAW rejected this recommendation. When Dickstein, Shapiro and INSLAW could no longer agree on how to proceed with the case, INSLAW decided to seek new counsel.[173]

Conway told the Staff that at no time during his representation of INSLAW had Leonard Garment, or anyone else from Dickstein, Shapiro, or the Department of Justice, attempted to influence his activities or judgment concerning the INSLAW case.[174] Conway said that his actions at all times had been based on his professional judgment as to what was in the best interest of his client.[175]

Commencing on December 2, 1988, U.S. Bankruptcy Court Judge James F. Schneider, sitting by special assignment,[176] heard two days of arguments in connection with objections raised by INSLAW to the payment of Dickstein, Shapiro's fees. This hearing was the result of a motion filed by INSLAW on January 22, 1988, in which it had opposed Dickstein, Shapiro's application for fees on the grounds that:

> . . . [Dickstein, Shapiro] fired Ratiner and then withdrew from the case, not, as it maintained, because of professional judgment that the settlement authority demanded was in INSLAW's best interest under all the circumstances, but rather, because the case threatened the firm's relationship with the Attorney General, the DOJ, and its economic interests flowing from that relationship.[177]

Despite its reliance on these grounds in its January filing as well as in a subsequent filing dated September 29, 1988,[178] INSLAW did not pursue this line of argument during the December hearing. INSLAW argued instead that the retainer agreement between INSLAW and Dickstein, Shapiro had set a firm limit of $150,000 to be paid as compensation to Dickstein, Shapiro through the period of discovery, and that any fees above that were not allowable.[179] On March 13, 1989, Judge Schneider issued a written opinion in which he overruled INSLAW's objections to Dickstein, Shapiro's fees. Judge Schneider's opinion included the following Conclusions of Law:

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> 12. DS&M did not violate its ethical obligations to INSLAW, based upon all the credible evidence in the record.
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> 13. The opinion formed by DS&M regarding the likelihood of success of the INSLAW litigation was reasonable in light of the facts of the case and the applicable law.

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[173] Letter to Seymour Glanzer, Esq. and Frederick Lowther Esq., Dickstein, Shapiro and Morin, from William Hamilton, January 19, 1987.

[174] Staff interview of Richard Conway, October 18, 1988.

[175] *Id.*

[176] The case was assigned to Judge Schneider of the U.S. Bankruptcy Court for the District of Maryland because of the recusal from the case of Judge S. Martin Teel of the Bankruptcy Court for the District of Columbia.

[177] Opposition at para. 30.

[178] *See* INSLAW's Objections to Proof of Claim filed by Dickstein, Shapiro & Morin, *In re: INSLAW, Inc., Case No. 85-00070 (Bankr. D.D.C.), September 29, 1988.*

[179] Dickstein, Shapiro had filed a third and final application requesting total compensation for all work performed in the amount of $464,096.31.

15. INSLAW's allegations of wrongdoing on the part of DS&M are built upon supposition, suspicion and uncorroborated hearsay, all of which this Court finds to be unworthy of belief.

16. There is no credible evidence in the record to support INSLAW's charge that DS&M removed Leigh Ratiner from the case because it was pressured to do so by DOJ. On the contrary, despite Mr. Ratiner's impending departure from the firm, he remained assigned as lead counsel until his own request to be relieved of his responsibilities regarding the litigation.[180]

The Staff found no proof to contradict Judge Schneider's conclusions as to Dickstein, Shapiro's actions with respect to Ratiner, or its handling of the INSLAW litigation. The Staff found no proof of any pressure exerted upon Dickstein, Shapiro by the Department of Justice which in any way affected the firm's representation of INSLAW.

H. The Staff Found no Proof That the Department of Justice Attempted To Influence the Selection Process for U.S. Bankruptcy Court Judge in Order To Deny Judge George Bason Reappointment

On September 28, 1987, Judge George Bason delivered an extended bench ruling in the INSLAW case which was sharply critical of the Department of Justice and numerous specific individuals within the Department.[181]

On February 4, 1988, Judge Bason's term of office was due to expire.[182]

On December 28, 1987, Judge Bason was informed that he was not being reappointed to the bench. Selected to succeed Judge Bason was S. Martin Teel, an attorney from the Tax Division of the Department of Justice who had made a brief appearance in the INSLAW case on behalf of the IRS. Since that time much speculation has ensued from Hamilton and others as to whether Bason's decisons in the INSLAW case had anything to do with the decision not to reappoint him and whether the Department of Justice had in any way attempted to influence the decisionmaking process so as to ensure that Bason was not reappointed.[183]

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[180] Memorandum Opinion Overruling Debtor's Objection to the Proof of Claim of Dickstein, Shapiro & Morin for Compensation as Debtor's Former Special Counsel, *In re: INSLAW, Inc.*, Case No. 85-00070 (Bankr. D.D.C.), March 13, 1989, at 89-39.

[181] *See* Adversary Proceeding Record, September 28, 1987, at 8-51.

[182] Bankruptcy judges are not Article III judges. The Bankruptcy Amendments and Federal Judgeship Act of 1984, P.L. 98-353, 98 Stat. 333, authorized the Court of Appeals for each circuit to appoint bankruptcy judges for 14-year terms. Incumbent bankruptcy judges may apply for reappointment upon the expiration of their terms. Judge Bason had been appointed in 1984, to fill the unexpired term of retiring Judge Roger Whalen.

[183] *See* Hamilton, "Basic Hypothesis" at 64-65. Shortly after the decision had been made not to reappoint him, Judge Bason wrote to Chief Judge Patricia Wald of the Court of Appeals, requesting that the decision be remanded to the Judicial Council of the District of Columbia Circuit for a hearing. In his letter Judge Bason stated:

> A number of lawyers and others have suggested to me that there may be a more sinister, hidden force behind what has happened. They suggest that somehow the Justice Department has undertakne to influence the judicial selection process as a means of retaliation against me for my recent rulings in INSLAW, Inc. v. *United States Department of Justice.*

Under the Procedures for the Selection of Bankruptcy Judges established by the U.S. Court of Appeals for the District of Columbia Circuit, individuals who meet the qualifications established by the Bankruptcy Amendments and Federal Judgeship Act of 1984, and the Regulations of the Judicial Conference of the United States adopted pursuant thereto, may apply for appointment as bankruptcy judge.[184] Applications are reviewed by a Merit Selection Panel, whose members are appointed by the Chief Judge of the Circuit upon the recommendation of the Chief Judge of the District.[185] The Merit Selection Panel is charged with identifying five to ten of the best qualified candidates, and submitting a report on these candidates to the Judicial Council.[186] The Judicial Council, which is composed of the twelve judges of the Court of Appeals and six judges from the District Court, reviews the report of the Merit Selection Panel and then recommends at least three candidates to the Court of Appeals. The Court of Appeals, by a majority vote of the judges in active service, then selects an individual for appointment as bankruptcy judge.[187]

The Staff reviewed the official files pertaining to the selection process,[188] and interviewed Judges Patricia Wald and Abner Mikva of the Court of Appeals and Judges Aubrey Robinson and Norma Holloway Johnson of the District Court, all of whom participated at various stages in the selection process.[189] The Staff found no proof that the Department of Justice attempted to influence the selection process so as to deny Judge Bason reappointment. The judges all stated to the Staff that they had never been contacted by anyone in the Department of Justice with complaints about Judge Bason vis-a-vis INSLAW.[190] Indeed, Judge Johnson

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[184] The minimum qualifications established by the Act and the Regulations include the following:

(a) Applicant must be a member in good standing of the bar of the highest court of at least one state or the District of Columbia;

(b) Applicant must have engaged in the active practice of law, or other substitute experience, for at least five years;

(c) Applicant must:

(1) Be competent to perform the duties of the office;

(2) Possess, and have the reputation for integrity and good character;

(3) Possess, and have demonstrated, a commitment to equal justice under the law;

(4) Be of sound physical and mental health;

(5) Possess, and have demonstrated, outstanding legal ability and competence; and

(6) Indicate by demeanor, character, and personality that the applicant would exhibit good judicial temperament.

[185] According to the Procedures established by the Court of Appeals, the Chief Judge of the District commonly recommends members of the Merit Selection Panel in the following manner: one U.S. District Judge; the dean or the designee of the dean of an accredited law school located within the District of Columbia, an attorney with a predominantly bankruptcy practice within the District of Columbia, the president or the designee of the president of the District of Columbia Bar Association or the Bar Association of the District of Columbia.

[186] The Judicial Council may agree to accept a report from the Merit Selection Panel containing fewer than five names. For the first vacancy in the office of bankruptcy judge occuring on or after July 10, 1984, the list of recommended nominees shall include the incumbent bankruptcy judge, if the judge requests consideration for appointment and the Panel determines that the bankruptcy judge is qualified. The bankruptcy judge is then to receive consideration equal to that of all other nominees for the position.

[187] If a majority cannot agree, the Chief Judge of the Circuit makes the selection.

[188] The files are maintained by the Circuit Executive for the District of Columbia Circuit.

[189] Judge Wald, the Chief Judge of the Circuit, appointed the Merit Selection Panel and participated in the Appeals Court's decision; Judge Mikva participated in the Appeals Court's decision; Judge Robinson, the Chief Judge of the District, recommended the members of the Merit Selection Panel to Chief Judge Wald and was a member of the Judicial Council; Judge Johnson was the Chairman of the Merit Selection Panel.

[190] Staff interview of Judges Wald, Mikva, Robinson, and Johnson, June 21, 1988.

told the Staff that the Department declined an opportunity to discuss Judge Bason before the Merit Selection Panel because of the pendency of the INSLAW case. By contrast, Judge Johnson told the Staff that Charles Work, INSLAW's counsel, did appear before the Panel, after having been assured that the Department also had been offered the opportunity.

III. THE SUBCOMMITTEE EXPERIENCES PROBLEMS WITH THE DEPARTMENT OF JUSTICE

A. The Staff's Attempt To Conduct a Free, Full, and Timely Investigation Was Hampered by the Department's Lack of Cooperation

The Department of Justice objected to the Subcommittee's investigation of the conspiracy allegations made by Hamilton on the grounds that the core of the controversy—the Court's findings against the Department—was the subject of a legal appeal by the Department. The Department's representatives expressed fear that the Subcommittee's investigation would jeopardize the anticipated appeal. The Members determined that the Staff's investigation would proceed over the objection of the Department, based on the gravity of the allegations and the fact that Hamilton's conspiracy allegations had not been raised, and were not at times in the pending litigation.

Despite that decision, the Subcommittee investigation continued to meet with resistance and delays in response by the Department of Justice.

The following chronology, which outlines the delays and difficulties encountered in attempting to interview Departmental witnesses, is illustrative of how a lack of cooperation by the Department hindered a free, full, and expeditious inquiry into this matter.

On April 26, 1988, the Chairman wrote Attorney General Meese formally requesting the cooperation of the Justice Department in the Subcommittee's investigation. The request specifically asked that the Department make available to the Subcommittee Justice Department officials and employees with knowledge of the Department's dealing with INSLAW, Inc.

In late April and early May 1988, the Staffs of the Department and Subcommittee discussed the Chairman's request on several occasions by phone. The Justice Department suggested that the Subcommittee delay any inverviews of Justice employees pending resolution of litigation between the Department and INSLAW. The Subcommittee Staff advised the Department that, given the nature of the allegations, the Subcommittee has determined that it was unable to delay indefinitely its investigation.

On May 17, 1988, in a meeting with Subcommittee Staff, the Department of Justice took the position that a Departmental attorney, most likely a member of the Department's litigation team for the INSLAW matter, would have to be present during any Subcommittee interviews of

Department employees. The Department officials stated that those attorneys were all preparing the Department's appellate brief in the INSLAW litigation and that the Department therefore would be unable to proceed with any interviews until after the filing of the Department's brief.

On June 1, 1988, in a meeting with the Subcommittee Staff, John Bolton, Assistant Attorney General for the Civil Division, again stated that any Department employees interviewed by the Subcommittee must be accompanied by Department attorneys. Mr. Bolton again stated that, to the extent Department litigation attorneys would be required to represent employees during the Subcommittee's interviews, the Subcommittee's desire to proceed quickly in this regard would prevent the Department from pursuing its appeal of litigation. However, Mr. Bolton also raised the possibility during this meeting that Department attorneys other than those from the litigation branch could be used during the Subcommittee's interviews. The Staff agreed to raise this option with the Subcommittee.

During June 1988, the Justice Department was advised that the Subcommittee had decided that, given the Department's insistence that attorneys representing the Department (as opposed to the witness) be present at all interviews, the Subcommittee could conduct formal depositions of Department employees, and that non-litigation branch attorneys from the Department would be allowed to be present.

From June to July 1988, the Department of Justice subsequently changed its position and once again insisted that members of the Department's litigation branch would attend the depositions. In response, the Subcommittee decided that, if such were the case, it would in fairness allow an attorney representing INSLAW also to be present. The Subcommittee gave the Department the choice of proceeding with depositions at which no attorneys were present other than the deponent's personal attorney or to proceed with depositions attended by representatives of both the Department's and INSLAW's litigation teams. In the latter case, the attorneys would be allowed to attend depositions as observers only.

During mid- to late July 1988, the Justice Department advised the Subcommittee Staff that the Department would make persons available for deposition in the presence of the Department of Justice litigation lawyer as well as a lawyer representing INSLAW. The Justice Department advised that subpoenas for the depositions would be unnecessary and that the individuals would appear.

From late July to early August 1988, the Staff and the Department began scheduling depositions with selected Justice Department employees.

In early August 1988, the Department advised the Staff that one of the individuals scheduled to be deposed, Thomas Stanton, had refused to voluntarily appear before the Subcommittee.

On August 5, 1988, the Subcommittee served a subpoena upon Thomas Stanton to appear before the Subcommittee on August 11, 1988.

On August 9, 1988, the Subcommittee began deposing employees from the Justice Department. At the conclusion of the depositions scheduled for that day, the Department litigation attorney present at the deposition requested a transcript of the depositions for review by the Department.

On August 10, 1988, prior to the start of the deposition scheduled for that morning, the Department objected to further depositions unless it was provided with daily transcripts of each deposition for use by the Department. The Department also stated that witnesses would not appear for further depositions unless the Subcommittee agreed to this request. The Subcommittee rules provide for private depositions and authorize release of transcripts only to a witness and/or witness' counsel to review for accuracy under the supervision of the Subcommittee or its staff. Pursuant to those rules, the Subcommittee advised the Department that it would not, as a matter of course, provide copies of transcripts to the Department for its own use absent some formal petition to the Subcommittee for the public release of the transcripts. After internal consultations, the Department agreed to go forward with that day's deposition on the condition that the Department's attorney be allowed to make a statement of protest on the record. The deposition that had been scheduled for 10 a.m. that morning was then held at 3 p.m. that afternoon. The deposition which previously had been scheduled for 2 p.m. that afternoon was postponed until 3 p.m. on August 11, 1988.

On August 11, 1988, the Justice Department counsel and witnesses arrived and advised the Subcommittee staff that Attorney General Meese, at a meeting at 8:30 that morning, had instructed the witnesses and Justice counsel to refuse to participate in the depositions scheduled for that day unless the Subcommittee greed to two conditions: (1) that counsel for INSLAW not be allowed in the deposition room, and (2) that the witness receive a copy for his possession of the final deposition transcript. Counsel for the Justice Department advised that this would be the Department's position as to any and all Justice Department employees scheduled to be deposed by the Subcommittee.

These objections were personally presented to Chairman Nunn and Senator Cohen by the Justice Department attorney, at which time the Chairman directed both the Justice Department attorney as well as the two Justice Department witnesses scheduled to be deposed to return that afternoon for a Subcommittee hearing.

During that hearing, both Chairman Nunn and Ranking Minority member Roth expressed their frustration with the Department's continued lack of cooperation with the Subcommittee's investigation:

> Senator NUNN. It looks like you have had us jumping through one hoop after another and frankly we are getting a little tired of it [1] * * * It seems that at some point someone has to exercise just basic good judgment and sensitivity in the Department of Justice and there has been a scarcity of that in this proceeding for the last three months. We have had one problem after another and we are right now back where we were several months ago.[2] * * *
>
> Senator ROTH. [T]he real problem is we do not know what the facts are and what has concerned me, as has concerned this Subcommitee in general, is that we have not secured the kind of cooperation that we think is essental in this kind of investigation.[3]

It ultimately took the threat of a contempt finding, and the confirmation of a new Attorney General, before the Department was willing to return to the *status quo ante* in producing witnesses for depositions. Subsequent to the Subcommittee's hearing, Attorney General Richard Thornburgh agreed to allow Department employees to continue to be deposed by the Staff in the presence of litigation attorneys representing both the Department and INSLAW.

B. IN ASSIGNING DEPARTMENT COUNSEL TO DEPARTMENT WITNESSES CALLED TO TESTIFY BEFORE THE STAFF, THE DEPARTMENT VIOLATED BASIC PRINCIPLES RELATING TO CONFLICTS OF INTEREST AND THE ATTORNEY-CLIENT RELATIONSHIP

In insisting upon Departmental representation of Department employees involved in an investigation focusing on the Department itself, the Department violated basic principles of attorney-client relationships and conflict of interest, as well as the Department's own policies.

From the beginning, the Subcommittee's investigation of this matter had been based on serious allegations of impropriety by the Department of Justice itself, including a Finding of Fact by the Bankruptcy Court that the Department "took, converted, stole, . . . by trickery, fraud and deceipt INSLAW's property." Moreover, serious allegations of impropriety had been made regarding some of the employees in question. As Senator Rudman noted during the Subcommittee's August 11 hearing, "[these allegations], if true, constituted criminal conduct under the U.S. Criminal Code. . . ."

Despite the very serious nature of the allegations and the considerable potential for a conflict between the interests of the Department and the interest of indiviual employees in this matter, the Department of Justice insisted on providing a single counsel, from the Department's INSLAW litigation team, to represent simultaneously individual witnesses as well as the Department of Justice.

In maintaining this position, the Department was serving Departmental interests at the expense of the individual witnesses. As

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[1] "Investigation of the INSLAW Case," Hearing Before the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs, United States Senate, 100th Congress, 2nd Session, August 11, 1988, at 14.

[2] *Id.* at 21.

[3] *Id.* at 14.

an example, the Department attorney, in keeping with the Department's institutional interests, directed Thomas Stanton and Robert Huneycutt, Department employees who had been subpoenaed by the Subcommittee, that they were to refuse to testify at the depositions scheduled by the Subcommittee, thus exposing those witnesses, to possible contempt citations. As discussed during the hearing, the Department's insistence on this procedure created an obvious conflict of interest:

> Senator LEVIN. The Justice Department decided this morning that it would not proceed with the depositions under those circumstances?
>
> Mr. BOLTON. Those were the Attorney General's directions, yes.
>
> Senator LEVIN. Were your clients advised of that?
>
> Mr. BOLTON. I did not personally advise them. I believe that they were certainly told. I believe Ms. Spooner told them what the circumstances were.
>
> Senator LEVIN. Now, are your clients making up their decision? Is this a recommendation to them or are you telling them they are not going to proceed?
>
> Mr. BOLTON. I think because of the circumstances in which it arose, because of the nature, we told the two witnesses who were scheduled to testify today what had happened and that the deposition which I believe had originally been scheduled for 10:00 a.m. this morning would not go forward pending further discussions with the Subcommittee.
>
> Senator LEVIN. The Justice Department decided this?
>
> Mr. BOLTON. That's right, that's because of the Attorney General's direction, that under those circumstances that the 10:00 o'clock deposition, obviously, the first one, would not proceed.
>
> Senator LEVIN. Your clients didn't decide that, you decided it?
>
> Mr. BOLTON. That's correct.
>
> Senator LEVIN. Is that what you call a lawyer/client relationship?
>
> Mr. BOLTON. I believe in those circumstances that that is a tactical decision that a lawyer might well make. I do not think it is particularly funny, either. In any event, we were——
>
> Senator NUNN. I don't either, because you have basically taken the Justice Department position and imposed it on the people you are supposedly representing. They were not asked, they were not consulted, they were simply told that the Attorney General had decided that the Justice Department's position was that they would not testify and therefore they would not testify. It seems to me that gets right to Senator RUDMAN's——
>
> Senator LEVIN. That's the conflict.
>
> Mr. BOLTON. There is no conflict. The only——
>
> Senator LEVIN. Well, you did not recommend anything to your clients. You directed them as their employer.

> Mr. BOLTON. Senator, as you well know, in the course of a deposition an attorney is frequently faced with the need to instruct the witness not to anwer a question. I have done it probably hundreds of times in depositions.
>
> Senator LEVIN. And that is based on prior advice to the client and agreement with that client on a certain course of conduct. Here you have a decision of the Justice Department as the employer of these people instead of their lawyers. If that is not a built-in conflict, I do not know what is. [4]

Despite the concern over this matter articulated by the Members, the Department continued in subsequent depositions with the practice of using the same attorney to represent both the witness and the Department itself.

In addition, the same Department lawyer acted as counsel for *all* the Department's witnesses. Despite the numerous allegations regarding many of the witnesses deposed by the Subcommittee, the Department apparently ignored the possibility of conflicts of interest among the witnesses themselves in reaching its determination to provide all the witnesses with the same Department counsel.[5] In the case of Robert Huneycutt, the Department's counsel was apparently imposed on the witness, without any request for representation from the witness.[6]

Moreover, in pursuing this course of action with respect to Department witnesses, the Department ignored its own previous policy pronouncements. A 1980 memorandum opinion from the Justice Department's Office of Legal Counsel to the Counsel for the President [7] dealt directly with the propriety of providing legal representation for Executive Branch employees in the context of a Congressional investigation. The particular matter which constituted the subject of the 1980 memorandum was representation of White House employees being questioned in connection with a Senate Judicary Committee investigation of the relationship and activities of Billy Carter with respect to the government of Libya.

The Justice Department concluded in that instance that no government attorney may represent the personal interests of employees with regard to a Congressional investigation, but that a government attorney may and should represent *governmental interests* (emphasis in original) [8] in connection with such investigations.

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[4] *Id.* at 15-16.

[5] 28 C.F.R. § 50.15, entitled Representation of Federal officials and employees by Department of Justice attorneys or by private counsel furnished by the Department in civil and Congressional proceedings . . . states at § 50.15(9) as follows:

> If conflicts exist between the legal and factual positions of various employees in the same case which make it inappropriate for a single attorney to represent them all, the employees may be separated into as many compatible groups as is necessary to resolve the conflict problem and each group may be provided with separate representation. Circumstances may make it advisable that private representation be provided to all conflicting groups and that direct Justice Department representation be withheld so as not to prejudice particular defendants.

[6] *See* Transcript of Proceedings of the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs, August 11, 1988, at 4.

[7] Memorandum Opinion for the Counsel to the President, from the Office of Legal Counsel, Department of Justice, August 27, 1980, in 4B Opinions of Office of Legal Counsel 749 (1980).

[8] *Id.* at 750.

However, the Department's opinion stated that with respect to such representation, [a] government attorney may be 'detailed' *from an agency which otherwise has no involvement in the matter under investigation.* (emphasis added)[9] Indeed, the Department's opinion noted that the White House had agreed with the Senate Committee that the Office of White House Counsel would not represent any employee involved, presumably to avoid even the appearance of collusion or other wrongdoing.[10]

In the INSLAW investigation, the line between personal and governmental interests is very blurry. There were allegations in this matter suggesting that some Department employees had acted beyond the scope of their authority. These employees thus could be subject to possible criminal sanctions. Moreover, the Department's own Office of Professional Responsibility, as well as its Public Integrity Section, were conducting investigations of their own into the actions of certain individuals in this matter. It is entirely possible, therefore, that some of the very individuals on whom the Department imposed Departmental counsel may themselves be the subjects of Departmental investigations.

The 1980 Justice Department memorandum opinion clearly stated that counsel may not be provided to defend Executive Branch personnel in an investigation or proceeding being pursued within the Executive Branch. Shifting to the Congressional context, the opinion then stated:

> The personal interests of employees in regard to the Congressional investigation tend to parallel the purposes of the OPR investigation. Generally, it will serve the personal interests of employees to avoid making statements to the Senate that would result in adverse criminal, civil, or administrative action by OPR. As discussed above, there is no existing statutory authority for the Executive Branch to protect these personal interests through the provision of counsel. To the extent that these interests are implicated by the Senate investigation, we think that it would be inappropriate for the government to provide counsel to represent them.[11]

In light of the serious allegations involved in the INSLAW matter, and especially in light of ongoing Departmental investigations, the Department clearly had conflicting responsibilities with respect to providing legal representation in connection with this investigation. The precedent set by the White House in the Billy Carter investigation of avoiding "even the appearance of collusion or other wrongdoing" should have been followed by the Department in this investigation. Any governmental interests the Department may have had in connection with this investigation could have been served by the detailing of attorneys from other agencies which otherwise had no involvement in the matter under investigation.

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[9] *Id.*
[10] *Id.*
[11] *Id.* at 754.

The Staff also believes that the Department's insistence on a Departmental presence at employee interviews and depositions served, wittingly or unwittingly, to intimidate employees who otherwise may have cooperated with the Staff's investigation. The Staff learned through various channels of a number of Department employees who desired to speak to the Subcommittee, but who chose not to out of fear for their jobs. In one instance, a Department employee was reportedly willing to talk to the Staff, but would not testify in a deposition if a Department of Justice attorney was present.

The Department apparently ignored its own policy in this case. It did so, in the Staff's opinion, to protect its own interests in civil litigation and at the expense, not only of the taxpayers' money, but also of the rights and interests of the very individuals it was proposing to represent.

C. The Department Refused to Cooperate With the Subcommittee's Attempts to Carry Out its Legitimate Oversight Responsibilities in Connection With its Inquiries Concerning the Department's Office of Professional Responsibility

In addition to its lack of cooperation with respect to attempts to interview witnesses, the Department also refused to cooperate with efforts to examine the effectiveness of the Department's internal mechanisms of accountability.

In its opinion in the INSLAW case, the Bankruptcy Court has found that there had been "an institutional decision by the Department of Justice consciously made at the highest level simply to ignore serious questions of ethical propriety, impropriety, made repeatedly by persons of unquestioned probity and integrity . . ." [12]

In light of this and other factors which came to the Subcommittee's attention, Chairman Nunn in a letter to Attorney General Meese dated April 26, 1988, requested:

> [a] comprehensive briefing on the status and/or disposition of any and all investigations or inquiries conducted by the Department's Office of Professional Responsibility into the actions of C. Madison Brewer, D. Lowell Jensen, Anthony Pasciuto, or any other official or employee of the Department, with respect to INSLAW, Inc., including the identity of all individuals who were, or are, responsible for the conduct of these investigations.[13]

In telephone conversations with the Department's Office of Legislative Affairs, the Staff expanded upon this request to include information on investigations or inquiries conducted by the Department's Public Integrity Section. This additional request was made after the Staff became aware of a review which had been conducted by the Department to determine whether appointment of an independent counsel was warranted. In a letter to INSLAW's attorneys, dated May 4, 1988, John C. Keeney, Acting Assistant Attorney

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[12] Adversary Proceeding Record at 16–17.

[13] Letter to Hon. Edwin Meese III, Attorney General, from Hon. Sam Nunn, Chairman, Senate Permanent Subcommittee on Investigations, April 26, 1988. See Appendix G for full text of this letter.

General, Criminal Division, had informed INSLAW that the Criminal Division had concluded, on the basis of its review of the allegations that an independent counsel was not warranted.[14]

Efforts to inquire into the Criminal Division's actions in this regard were rebuffed by the Department. The Department also complained when the Staff attempted to interview a former attorney with the Public Integrity Section concerning the Criminal Division's conclusion that the appointment of an independent counsel was not warranted.

In response to Chairman Nunn's request concerning the Office of Professional Responsibility, Thomas M. Boyd, Acting Assistant Attorney General, Office of Legislative Affairs, stated in a letter dated June 3, 1988, that "[a] briefing related to activities of the Department's Office of Professional Responsibility would be inappropriate and, consequently, it will not be provided." [15]

Despite this response, the Staff continued to try to impress upon the Department the importance of its concerns in this area. In a letter dated August 18, 1988,[16] the Department once again refused to provide any information as to the activities of OPR.

On September 8, 1988, the Staff asked the Department, through its Office of Legislative Affairs, to take a fresh look at its response to the Subcommittee on this issue. On September 20, 1988, the Office of Legislative Affairs advised the Staff that OPR was in the process of preparing a suitable response.

On September 28, 1988, five months after the Chairman had requested a comprehensive briefing on this issue, the Staff received its first substantive response from the Department. The response consisted of two sentences in a letter from Richard Rogers, Deputy Counsel of OPR, which stated that OPR had initiated an investigation of "the alleged misconduct" raised in the Bankruptcy Court's Findings of Fact, and that that investigation was ongoing.[17]

The Staff then contacted OPR directly to inform them of the dissatisfaction which it felt with their responsiveness, and again requested that OPR be more forthcoming with respect to the Staff's requests. On October 12, 1988, OPR provided the Staff with a limited, and very general, briefing of its ongoing investigation into the findings of the Court against the Department's employees. The OPR representatives stated that no officer or employee of the Department, including the Attorney General or Deputy Attorney General, had ever asked or directed that OPR's investigation into this, or any other matter, be slowed or stopped. The briefing, however, did not address the scope of the OPR investigations, nor did it detail any of OPR's findings. Based on this briefing, however, it

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[14] Letter to Charles R. Work, Esq., McDermott, Will and Emery, from John C. Keeney, Acting Assistant Attorney General, Criminal Division, Department of Justice, May 4, 1988. See Appendix G for text of this letter.

[15] Letter to Hon. Sam Nunn, Chairman, Senate Permanent Subcommittee on Investigations, from Thomas M. Boyd, Acting Assistant Attorney General, Office of Legislative Affairs, Department of Justice, June 3, 1988.

[16] Letter to Hon. Sam Nunn, Chairman, Senate Permanent Subcommittee on Investigations, from Thomas M. Boyd, Acting Assistant Attorney General, Office of Legislative Affairs, Department of Justice, August 18, 1988.

[17] Letter to Honorable Sam Nunn, Chairman, Senate Permanent Subcommittee on Investigations, from Richard M. Rogers, Deputy Counsel, Office of Professional Responsibility, Department of Justice, September 28, 1988. See Appendix G for the text of this letter.

was clear that OPR had not taken any action on the INSLAW allegations against Departmental employees until very recently.

At the time of the Staff's investigation, the Office of Professional Responsibility consisted of six attorneys who handled a case load of over 200 cases. Given those limited resources, some allegations are not pursued by OPR for reasons ranging from the office's case load to the weight of a particular complaint. Departmental ethics officials, personnel specialists, and supervisors are relied upon to take up those allegations and render appropriate action.

The Department's unwillingness to cooperate in this matter is, however, especially disturbing given the serious questions raised by the Bankruptcy Court about the manner in which the Department's mechanisms of internal accountability operate.

The Bankruptcy Court had found in its Findings of Fact and Conclusions of Law that on at least twelve separate occasions from 1982 through 1984, INSLAW or its representatives raised allegations of improper conduct with numerous senior Department of Justice officials, ranging from the General Counsel of the Justice Management Division, to the Director of the Executive Office for U.S. Attorneys, to the Deputy Attorney General.[18] Despite INSLAW's attempt to bring its allegations to the attention of the Department's hierarchy, and despite the fact that at least one of the individuals with whom INSLAW had raised the bias issue was a "Designated Ethics Officer" with the Department, absolutely no action was taken within the Department to bring these allegations to the attention of OPR or otherwise to investigate them.[19]

In fact, it was not until sometime in 1987, that OPR appeared to initiate any action in this matter. In July 1987, OPR acknowledged in a letter to Joseph E. Godwin of San Diego, California that an "inquiry into . . . concerns about alleged irregularities on the part of former Deputy Attorney General D. Lowell Jensen and C. Madison Brewer, an employee of the Executive Office for U.S. Attorney's" was ongoing.[20] Finally, in a letter dated June 29, 1989, some two years after it had initiated its investigation, OPR informed Mr. Godwin that it had determined that neither Mr. Brewer nor Mr. Jensen had "motivations or conflicts that properly should have excluded them from certain dealings with INSLAW." [21]

OPR acted much more expeditiously in investigating the conduct of Anthony Pasciuto, the Department employee who informed INSLAW of alleged misconduct on the part of various Department officials. Mr. Pasciuto appeared as a witness for INSLAW in the Independent Handling Proceeding on June 1, 1987. In July 1987, Arnold Burns, Deputy Attorney General, referred allegations of misconduct on the part of Mr. Pasciuto to OPR for investigation.[22]

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[18] Adversary Proceedings Findings of Face Nos. 336-339; 341-347; 285-289. See Appendix H for text of these Findings.

[19] *See* Adversary Proceeding Finding of Fact No. 349.

[20] Letter to Joseph E. Godwin, from Robert B. Lyon, Jr., Acting Assistant Counsel, Office of Professional Responsibility, Department of Justice, July 8, 1987.

[21] Letter to Joseph E. Godwin, from Robert B. Lyon, Jr., Acting Counsel, Office of Professional Responsibility, Department of Justice, June 29, 1989. See Appendix I for copies of correspondence between Mr. Godwin and OPR.

[22] *See* Memorandum to Arnold I. Burns, Deputy Attorney General, ATTN: Randy Levine, from Michael E. Shaheen Jr., Counsel, Office of Professional Responsibility, Department of Justice, December 18, 1987.

On December 18, 1987, only five months after receiving the referral, and less than two months after the Bankruptcy Court's decision against the Department, OPR submitted a memorandum to Deputy Attorney General Burns recommending that Mr. Pasciuto be fired.[23]

The Staff is concerned about OPR's actions in the Pasciuto matter. In its memorandum, OPR seemed almost as concerned with defending Pasciuto's superior, Thomas Stanton, against the Bankruptcy Court's ruling as it was with dealing with the specific allegations against Mr. Pasciuto. Indeed, among the grounds OPR cited for recommending that Mr. Pasciuto be fired was that,

> [i]n our view, but for Mr. Pasciuto's highly irresponsible actions, the Department would be in a much better litigation posture than it presently finds itself, and Mr. Stanton would not have been subjected to the personal embarrassment that the court's unjust pillorying of him has caused.[24]

Elsewhere in its opinion, OPR made the following statements:

> Based on the interviews during our inquiry, [deletion in original] we conclude that the Bankruptcy Court's remarks were unsubstantiated and unfair.[25]
>
> * * * * *
>
> Mr. Pasciuto's recantation notwithstanding, Judge Bason relied on [Pasciuto's] testimony about his remarks at the breakfast meeting to support his conclusion that Mr. Stanton engaged in misconduct. We have found no evidence that this conclusion was at all correct.[26]

The Staff's concerns about OPR are heightened by information received from a number of former Department of Justice employees. Numerous former mid-level employees stated that they felt that OPR was unwilling or unable to pursue allegations against senior-level or political-level employees. The Staff was also told that in cases OPR did pursue, it often used heavy-handed tactics, including failing to inform employees of their rights and pressuring employees to take polygraph exams.

For OPR to properly fulfill its function, it needs the trust of the rank-and-file employees of the Department. Based on the above, we strongly question whether such trust currently exists.

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[23] *Id.*
[24] *Id.* at 9.
[25] *Id.* at 8.
[26] *Id.* at 9.

IV. CONCLUSIONS

Within the scope of its investigation, the Staff found no proof of the existence of a broad conspiracy against INSLAW within the Department of Justice. Nor did the staff find any proof of the existence of a conspiracy between officials within the Department and outside parties to force INSLAW into bankruptcy for the personal benefit of those parties.[1]

The absence of a broad conspiracy within the Department, however, does not absolve the Department of the serious implications of the Bankruptcy Court's findings. Although the Department has appealed the Bankruptcy Court's decision, and may ultimately succeed in overturning it, the fact remains that the Department hired a former INSLAW employee, C. Madison Brewer, to oversee INSLAW's contract with the Department. As the Bankruptcy Court stated, "such prior employment would generally lead the former employee either to favor or to disfavor the former employer, thus preventing that person from being impartial in the discharge of his duties." [2] Whether or not the Bankruptcy Court's findings as to Brewer's bias are sustained on appeals, it is disturbing that the Department, in hiring Brewer, apparently ignored such an obvious potential for a conflict of interest situation.[3]

Moreover, even after allegations had been raised, and formal complaints made, regarding Brewer's possible bias in the administration of the INSLAW contract,[4] the Department failed to follow its own standard procedures with respect to the receipt and review of such allegations by the Department's Office of Professional Re-

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[1] Obstacles encountered by the Staff in securing the cooperation of the Department prevented the Staff from interviewing a broad range of Department employees. *See* Section IIIB of this Study, *supra* at 62. In addition, the Staff's limited resources prevented it from being able to pursue all of Hamilton's allegations.

[2] Adversary Proceeding Finding of Fact No. 128.

[3] The government-wide standard of conduct set forth at 5 CFR 735, and incorporated into the Department's regulations at 28 CFR 45.735-1(b), specifically provides:

> An employee shall avoid any action, whether or not specifically prohibited by this subpart, which might result in or create the appearance of: . . . (d) Losing complete independence or impartiality.

5 CFR 735.201(a). This same prohibition is incorporated in the Federal Acquisition Regulations, which require that:

> Government business shall be conducted with complete impartiality and with preferential treatment for none. Transactions relating to the expenditure of public funds require the highest degree of public trust and an impeccable standard of conduct. The general rule is to avoid strictly any conflict of interest in Government contractor relationships.

48 CFR 3.101-1. "Impartiality as used in these regulations is defined in the Federal Acquisition Regulations at 48 CFR 503.101-3 by reference to the General Service Administration Standard of Conduct at 41 CFR 105-735.202(c):

> *Impartiality in conduct of official business.* GSA personnel shall not allow themselves to be placed in a position in which a conflict of interest might aries or might justifiably be suspected. Such a conflict may arise or appear to arise . . . by any action which could reasonably be interpreted as influencing the strict impartiality that must prevail in all business relationships involving the government. Strict impartiality is often difficult to maintain when business relationships are allowed to be overly personal. . . .

[4] *See* Adversary Proceeding Finding of Fact Nos. 285-289 and 336-347; *see also* Section IIIC of this Study, *supra* at 67.

sponsibility.[5] Regardless of the ultimate disposition of the Bankruptcy Court's findings as to Brewer's actions, the Department's failure to follow standard procedures with respect to allegations raised against Brewer, coupled with its lack of concern over the potential for conflict of interest on Brewer's part, indicates a breakdown in the Department's mechanism of accountability.[6]

While this type of action does not establish the conspiracy alleged by INSLAW, it does suggest that the Department permitted personal bias to become a factor in the handling of a matter in which the Department itself was a principal party, without any visable effort to check or oversee that type of bias. When the Department, for whatever reasons, allows that kind of situation to persist, it opens the door for the kind of allegations that eventually arose in the INSLAW case and which, ultimately, seriously undercut the Department's integrity in the public eye.

The Staff also concludes that a lack of cooperation by the Department of Justice resulted in substantial delays in this investigation and seriously undercut the Subcommittee's ability to interview, in an open and candid manner, all those Department employees who may have had knowledge of the INSLAW matter. In requiring Department attorneys to simultaneously represent both the Department and individual Department employees in this investigation, the Department violated basic principles of conflict of interest and the attorney-client relationship.

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[5] The Department's regulations concerning the Office of Professional Responsibility state that the Counsel on Professional Responsibility *shall*:

> [r]eceive and review any information or allegation concerning conduct by a Department employee that may be in violation of law, regulations, or orders, or of applicable standards, or orders, or of applicable standards of conduct or may constitute mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to public health or safety.

28 CFR 0.39a(a).

[6] *See generally* Section IIIC of this Study, *supra* at 67.

V. RECOMMENDATIONS

1. GAO Should Review the Operations of the Executive Office for U.S. Trustees

In 1986, the Operations Support Staff of the Department of Justice's Office of the Comptroller conducted an internal control oversight review of the EOUST.[1] That review revealed serious problems with the EOUST's financial accounting system.[2] In 1987, the House Judiciary Committee's Subcommittee on Monopolies and Commercial Law held hearings on the EOUST and the nationwide Trustee program.[3] Those hearings revealed serious problems with the relationship between the EOUST and the individual U.S. Trustee offices.[4] In 1988, the Bankruptcy Court's decision in INSLAW's Independent Handling Proceeding found serious improprieties in the actions taken by the Director of the EOUST.[5] The Staff's own investigation found, in the least, unusually favorable treatment awarded to the Department by the Executive Office in the context of a case in which the Department was a creditor. All of this suggests that the nationwide Trustee program which Congress established may be in need of reevaluation.

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[1] *See* Internal Control Review of the Executive Office for U.S. Trustees, Operations Support Staff, Office of the Comptroller, 1986.

[2] *Id.* at 1-7.

[3] *See* Hearing Before the Subcommittee on Monopolies and Commercial Law of the Committee on the Judiciary, House of Representatives, 100th Congress, 1st Session, March 19, 1987.

[4] During the hearing, Richard Levine, former Director of the EOUST, stated in response to questioning from the Subcommittee as follows:

> What I have heard, by hearsay, but from a lot of people, is that the Executive Office uses the office to punish U.S. Trustees with whom there is disagreement—that under the current administration there is a feeling that you're either "we" or "they," you're one or the other, and that examples include requests for hiring approvals which are never granted, requests for extra staff as to which silence is the result, requests for improved space as to which silence is the result, direct accusations that particular individuals are disloyal because of positions they might take, that the allocation of resources is, in part, done on that kind of basis, that persons who criticize or question the policies of the office wind up either directly or indirectly, subtly or openly, having to defend themselves from accusations of disloyalty. All of that, therefore, creates a chill on the ability of the U.S. Trustees to be frank and open with the Executive Office, in that they don't therefore feel that they are getting the support that they ought to get.

Id. at 76.

When asked whether she had any comments on Levine's views, Delores Koppel, former U.S. Trustee for the District of Colorado and Kansas, stated:

> Only to the extent that what he has described to you as his information from the field is consistent with what I know to be the facts . . . to reach some very broad conclusions, but ones that I think are based on fact, the Executive Office relationship with most field offices is one that's governed by a rule of fiat and of fear. There is no room for legitimate dissent or questioning.

Id. at 78.

[5] *See* Independent Handling Proceeding Record at 1009-1033; Adversary Proceeding Finding of Fact No. 351(a)-(n).

2. The U.S. Trustee Should Be Prohibited From Playing Any Part in Bankruptcy Cases Wherein the Department of Justice Is Party to the Litigation

The U.S. Trustee program, administered by the Department of Justice, is designed to be an independent office to oversee the administration of bankruptcy cases in the United States. The Staff found that the system can be manipulated, resulting in the potential for biased handling of bankruptcy filings.

The U.S. Trustee is supposed to be impartial, favoring neither debtor nor creditor. In the INSLAW case, the Director of the EOUST took action to make sure that INSLAW's bankruptcy proceedings went smoothly in the eyes of his parent organization, a party to the case. For example, he provided the Executive Office of U.S. Attorneys with filings and information on the case, and attempted to detail the Trustee program's "expert" on Chapter 11 matters to work on the case. Although there is nothing inherently wrong with these actions, its seems clear that they were motivated by the fact that the EOUST's parent organization was a party in the case. This was something the Director would not have done for any other party in any other case. Clearly the potential for a conflict exists.

Two avenues for correction exist: 1) remove the Trustee program from the Executive Branch to preclude the possibility of "special treatment" to any department, agency, or office in the Executive Branch; or 2) legislate a requirement that the Trustee recuse himself in cases in which the Department is a creditor. In those cases, the Court would appoint a trustee from the private sector.

3. GAO Should Review the Operation of the Department of Justice's Office of Professional Responsibility

As noted, the Staff was unable to examine the internal operations of the Department's Office of Professional Responsibility. It was clear, however, that OPR, with a professional staff consisting of six attorneys managing a total case load of 200 inquiries, was not capable of conducting timely and thorough investigations in all instances where they are warranted. The Staff is also concerned about the role OPR plays in providing the Department with an independent and impartial system of accountability. The Staff is concerned that OPR has operated without sufficient oversight and that allegations against Department employees have not received adequate attention. The Staff applauds the creation of an Office of Inspector General in the Department; however, OPR shall continue, with greater resources, to be responsible for investigating allegations against those in the Department in attorney, criminal investigative, or law enforcement positions.

Given the above, the Staff recommends that the General Accounting Office conduct an historical audit to assess: 1) OPR's processes for receiving, reviewing, and testing allegations; 2) the criteria used to determine which allegations will be pursued; 3) the disposition of allegations not pursued; 4) the timeliness, throroughness, and impartiality of investigations and reports; 5) the influence, if any, that outside offices of the Department have on the above areas of concern; and 6) the referral and tracking mecha-

nisms for action taken, based on OPR's investigations. Such an examination will greatly assist both the Inspector General and the Office of Professional Responsibility in future tasks.

4. EXECUTIVE BRANCH AGENCIES SHOULD REFRAIN FROM PROVIDING IN-HOUSE GOVERNMENT COUNSEL TO REPRESENT THE PERSONAL INTERESTS OF EMPLOYEES WITH REGARD TO CONGRESSIONAL INVESTIGATIONS FOCUSING ON THAT AGENCY. IN THOSE INSTANCES WHERE GOVERNMENT COUNSEL IS NECESSARY TO REPRESENT GOVERNMENTAL INTERESTS, SUCH COUNSEL SHOULD BE DETAILED FROM AN AGENCY WHICH OTHERWISE HAS NO INVOLVEMENT IN THE MATTER UNDER INVESTIGATION

The Staff believes that the Department's actions in connection with the provision of counsel in this investigation represent an abuse of basic principles relating to attorney-client relationships and conflicts of interest. The enactment of legislation or regulations to prohibit such action in the future would only serve to codify a 1980 opinion of the Department's own Office of Legal Counsel.

SEPARATE VIEWS OF THE MINORITY STAFF

This investigation presented the Subcommittee staff with a particularly vexing assignment: how to unravel a complex matter which was at the time of the commencement of the investigation and remains to this day in the throes of ongoing litigation. In conducting an investigation under these circumstances, great diligence must be paid to not violating the integrity of the judicial process. At the same time, of course, the Subcommittee must carry out its mandate and conduct a thorough investigation. This requires balancing of legitimate interests of all parties.

An example of the difficulty presented is the question of the weight to be accorded to judicial findings which are currently on appeal. Reliance on a lower court's findings which are on appeal may lend an air of finality to the findings which is unwarranted. This problem is particularly apposite in this investigation because, not only are the substantive findings of the bankruptcy court in this matter being appealed, but the impartiality of the judge involved in this case is also under challenge. While such judicial findings may reasonably form the basis for initiating an investigation, PSI staff does not stand in the position of a court of appeals, bound by factual determinations of a lower court unless demonstrated to be clearly erroneous.

There can, in fact, be no substitute for the Subcommittee's independent investigation of any significant allegations, judicial findings notwithstanding.

APPENDICES

APPENDIX A

UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF COLUMBIA

(In Re: Case No. 85-00070)

INSLAW, INC., WASHINGTON, D.C. DEBTOR, INSLAW, INC., DEBTOR-IN-POSSESSION, PLAINTIFF

v.

THE UNITED STATES OF AMERICA AND THE UNITED STATES DEPARTMENT OF JUSTICE, SERVE: 1. HONORABLE JOSEPH E. DIGENOVA, U.S. ATTORNEY FOR THE DISTRICT OF COLUMBIA, AND 2. HONORABLE EDWIN A. MEESE, III, ATTORNEY GENERAL OF THE UNITED STATES, DEFENDANTS .

COMPLAINT FOR DECLARATORY JUDGMENT, AND FOR ORDER ENFORCING AUTOMATIC STAY, AND DAMAGES FOR WILLFUL VIOLATION OF AUTOMATIC STAY

INSLAW, Inc., Debtor-In-Possession ("INSLAW" or "Debtor"), by and through its undersigned counsel, as and for its Complaint alleges as follows:

JURISDICTION

1. This adversary proceeding arises in and relates to the Chapter 11 case of INSLAW Inc., Case Number 85-00070, which was instituted on February 7, 1985 and is now pending in this district.

2. This Court has jurisdiction over this matter pursuant to 11 U.S.C. §§ 105 and 106 and 28 U.S.C. §§ 157 and 1334.

PARTIES

3. Plaintiff INSLAW is a company organized and operated under the laws of the State of Delaware, with principal place of business in the District of Columbia. Its business is designing, manufacturing, marketing and maintaining software systems for use on computers.

4. Defendant United States of America is named as a defendant because this suit might be deemed potentially to affect public funds. Defendant United States Department of Justice ("DOJ" or "the Department") is wrongfully exercising dominion and control over, and causing damage to, property belonging to INSLAW.

BACKGROUND

5. This action is brought to redress and prevent injury to property—to wit, trade secrets—owned by INSLAW and presently in the custody of DOJ. That property consists of sensitive, confidential and copyright-designated "enhancements" to computer software, and supporting documentation. The enhancements are of substantial value to INSLAW as they constitute one of INSLAW's primary marketable assets. Despite INSLAW's demands for just compensation for the continued use of its property, DOJ has refused to make compensation and continues to utilize INSLAW's property while disparaging it, publicly calling into question INSLAW's ownership of it, and threatening to render it valueless by disclosing the enhancements to third parties.

6. INSLAW's grievance arises out of actions taken by employees of DOJ that harmed INSLAW in willful violations of the automatic stay provided for by Section

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362(a)(3) of the Bankruptcy Code. It also arises out of omissions by senior officials of DOJ to take remedial action to prevent the aforementioned violations and their failure to take such positive action as would have been necessary to give effect to the automatic stay. Also at issue are the actions of DOJ in offsetting claims due and owing by DOJ to INSLAW against claims allegedly due and owing by INSLAW to DOJ, without prior approval of this Court, in direct contravention of Section 362(a)(7) of the Bankruptcy Code.

7. At the center of INSLAW's grievance are the actions of C. Madison Brewer, III ("Brewer"), a DOJ employee who had been employed by a predecessor organization to INSLAW from November 1974 to May 1976 before being dismissed for cause. Brewer thereafter was employed by DOJ and was placed in charge of administering the DOJ/INSLAW program described hereafter. Upon information and belief, Brewer was biased against INSLAW based upon resentment engendered by his discharge. Brewer's actions were instrumental in propelling INSLAW into bankruptcy, and thereafter hindered INSLAW in its development of a plan of reorganization. Brewer's bias and conduct relating to INSLAW have been made known to officials at the highest levels of DOJ, including the Attorney General and Deputy Attorney General D. Lowell Jensen (the latter having a previously developed negative attitude towards INSLAW's product), yet DOJ has failed to take action to insulate the administration of the DOJ/INSLAW program from Brewer's bias.

8. INSLAW seeks a declaratory judgment that it owns all its privately funded enhancements to PROMIS (Count One); a declaratory judgment that DOJ's continuing use of those enhancements without INSLAW's consent, DOJ's perpetration of other actions that diminish the value of that property, and DOJ's offset of its obligations to INSLAW against claims allegedly owing by INSLAW to DOJ constitute violations of the automatic stay (Count Two); an Order directing DOJ to cease and desist from further actions in violation of the automatic stay (Count Three); and an award of damages in excess of $25,000,000.00 to redress DOJ's previous violations of the automatic stay, pursuant to 11 U.S.C. §362 and particularly subsection (h) thereof, and punitive damages in the amount of $5,000,000.00 (Count Four).

COUNT ONE

For Declaratory Judgment That INSLAW Owns the Property Which Is Presently Being Utilized by DOJ

9. INSLAW incorporates by reference the allegations of paragraphs 1-8 of this Complaint with the same force as if set forth fully herein.

A. The creation and development of the property

10. INSLAW was conceived by William Hamilton ("Hamilton") and Dean Merrill. In 1981, INSLAW succeeded to the ownership of the assets of the Institute for Law and Social Research ("Institute"), a not-for-profit company which had developed a primitive version of the software which, in a greatly enhanced and upgraded form, eventually was made available to DOJ and is at issue in this proceeding. The Institute had developed its version of the software—known as the Prosecutors Management Information System, or "PROMIS"—with funds from the Law Enforcement Assistance Administration ("LEAA"), in a program for automating certain law enforcement recordkeeping and case monitoring activities. For purposes of this Complaint, we denominate the Institute's primitive version as "old PROMIS."

11. After acquiring the Institute's assets, INSLAW began to make significant improvements to the old PROMIS software. Over time, more than 1,000 separate improvements were added to the program, most of which were funded entirely from private funds. Ultimately, this enhanced version of PROMIS was made available to the Department for use in certain United States Attorneys Offices on mini-computers. For purposes of this Complaint, we denominate this version of PROMIS as "Enhanced PROMIS." The improvements rendered the "Enhanced PROMIS" far superior to the Institute's "old PROMIS" in terms of speed, flexibility, ease of use, breadth of function, and ability to be modified for particular local needs. Throughout its marketing activities, INSLAW has maintained its entitlement to assert copyright protection for its privately financed enhancements to PROMIS.

B. The lease of the property

12. In 1981, DOJ (operating through a PROMIS Oversight Committee) decided to automate all United States Attorneys Offices ("USAO's") with old PROMIS. Brewer was designated to oversee the implementation of the automation effort. Early decisions were made to install old PROMIS on mini-computers in the 22 largest USAO's. Contrary to the advice of INSLAW, among others, the Department also decided to

attempt to implement a version of old PROMIS using word processing machines—a totally inhospitable and inefficient habitat for the software. By a Request for Proposals ("RFP") issued November 2, 1981, DOJ sought bids for implementation of old PROMIS on mini-computers and for a different version of PROMIS that would work on word processors.

13. In its proposal in response to the RFP, INSLAW informed the Department that the product it would propose to implement if it won the award was not old PROMIS but rather the updated Enhanced PROMIS to which INSLAW had made a significant developmental and commercial commitment. INSLAW and DOJ agreed that INSLAW should not be required to convey ownership of privately financed enhancements, and as a consequence the "standard form" provision that would have given to the Government exclusive ownership of the software was deleted from the contract ultimately executed by DOJ and INSLAW. Whatever rights, if any, DOJ acquired were limited to use of the enhanced version for use on mini-computers in designated USAO's.

14. Contract No. JVUSA-82-C-0074 to implement and install Enhanced PROMIS ("the Contract") was awarded to INSLAW on March 16, 1982. Brewer's office was assigned responsibility for all issues arising out of the implementation of the Contract.

15. Later that month, and consistent with its understanding of its contractual rights, INSLAW by memorandum advised DOJ that INSLAW was planning to market a product similar to Enhanced PROMIS to other customers, for which INSLAW would be charging license fees. The memorandum came to the attention of Brewer who, at a meeting called to review other matters, *sua sponte* raised the issue of, and strenuously opposed acknowledging, INSLAW's proprietary rights to the privately financed enhancements to PROMIS software on the grounds that the United States had funded old PROMIS through prior LEAA grants to the Institute.

16. Upon information and belief, Brewer was subsequently disqualified from consideration of the enhancements ownership issue by Associate Deputy Attorney General Stanley Morris ("Morris"), based upon information conveyed to Morris with respect to Brewer's bias. Subsequent to removing Brewer from consideration of the enhancements issue, Morris by letter dated August 11, 1982 acknowledged INSLAW's entitlement to assert proprietary rights to the privately financed enhancements to PROMIS that had not been specified for delivery to DOJ.

17. In December 1982, DOJ requested from INSLAW, pursuant to the Contract, copies of certain technical information that supported the software provided by INSLAW to DOJ. That information—which included the "source" and "object" codes for the software—contained highly sensitive, proprietary information which was the key to understanding and using the privately financed enhancements made by INSLAW to PROMIS. INSLAW responded that, before it would provide that information, DOJ should reaffirm the parties' mutual understanding that INSLAW retained all proprietary rights to those enhancements. Once again, Brewer intervened in opposition to INSLAW. William Snider ("Snider"), then Administrative Counsel to DOJ's Management Division, took charge of the negotiations and, in a meeting with Contracting Officer Peter Videnieks and INSLAW representatives, acknowledged that INSLAW had no obligation to provide the enhancements without being paid for them. Snider further advised INSLAW that DOJ would negotiate compensation to INSLAW for all such enhancements which the Department wished to use. This agreement was reflected in a letter from Videnieks to INSLAW, dated March 18, 1983. On the basis of the aforementioned agreement and letter, a supplemental agreement was executed on April 11, 1983 between INSLAW and the Department, and shortly thereafter INSLAW delivered the requested technical information to DOJ.

18. Despite its representation that it would negotiate an appropriate payment to INSLAW for use of the privately financed enhancements, DOJ refused to meet with INSLAW to identify the enhancements to be used, and rejected multiple efforts by INSLAW to identify such enhancements. Instead, DOJ has proceeded to utilize Enhanced PROMIS without compensating INSLAW for the use of the privately financed enhancements. The Department has formally rejected INSLAW's claim for reimbursement for license fees, and has backed away from its acknowledgment that INSLAW owns the privately financed enhancements. DOJ's actions have cast doubt in the minds of third parties as to INSLAW's ownership of the enhancements.

19. Because DOJ's actions have created a cloud on INSLAW's ownership of the enhancements included in Enhanced PROMIS, INSLAW has experiencd serious difficulties in marketing its property. While these efforts have met some success—one other agency of the United States Government has recognized INSLAW's right to

market Enhanced PROMIS and paid INSLAW a license fee for the use thereof—the efforts have been rendered much more difficult by the actions of DOJ.

20. INSLAW owns and always has owned the privately financed enhancements included in Enhanced PROMIS.

Wherefore, INSLAW prays for a Declaratory Judgment

(1) that INSLAW alone—not the United States Department of Justice—owns the privately financed enhancements to PROMIS as embodied, recorded, developed and realized in that particular from referred to herein as Enhanced PROMIS during performance of Contract No. JVUSA-82-C-0074;

(2) that DOJ's property interst in PROMIS is limited to and consists solely of the right to utilize old PROMIS (which is in the public domain), and DOJ is entitled to utilize Enhanced PROMIS only upon payment of appropriate compensation to INSLAW; and

(3) that INSLAW has the sole and exclusive right to sell, lease or otherwise market or make available INSLAW's privately funded enhancements included in PROMIS.

COUNT TWO

For a Declaratory Judgment That DOJ Has Violated the Automatic Stay

21. INSLAW incorporates by reference the allegations of paragraphs 1–20 of this Complaint with the same force as if set forth fully herein.

22. In the course of INSLAW's performance of the Contract and thereafter, INSLAW was harassed by DOJ (principally through Brewer and his staff). For example, beginning in the early stages of the Contract and continuing to and beyond the institution of INSLAW's bankruptcy proceedings, Brewer acting for DOJ began to question INSLAW's financial condition. Brewer caused payments properly due to INSLAW to be delayed despite the fact that payments had, by previous agreement, been directed into the special bank account which could not be utilized by INSLAW without prior consent of the Contracting Officer. Brewer continued to direct the withholding of funds, to the point where in excess of one million dollars crucial to INSLAW's operations were withheld without justification. Brewer and the Department knew or should have known that their actions were not taken on the merits and that the cumulative effect of those actions would be to force INSLAW into bankruptcy and possibly liquidation.

23. Shortly before the institution of this bankruptcy proceeding, Brewer, acting for DOJ, frustrated negotiations between DOJ and INSLAW to develop a new plan for expanding Enhanced PROMIS on computers (rather than word processors) for use in additional USAO's. Brewer first delayed meeting with INSLAW. Thereafter, when told that his delays were particularly damaging because they would cause INSLAW to lose valued personnel with USAO systems experience, Brewer responded that that was exactly what he wanted to happen. Brewer told INSLAW's Hamilton that the reason he rejected the new proposal was because it called for license fees for INSLAW's proprietary enhancements. Brewer took this position in spite of Morris' earlier decision that INSLAW could assert a claim to its proprietary enhancements.

24. At about the time INSLAW file for Chapter 11 protection Brewer acting for DOJ announced publicly that he would extend the mini-computer version of PROMIS to numerous additional USAO's. Asked how he would manage such an effort, he stated that he would hire INSLAW employees into the Government, thus threatening both to decimate the existing INSLAW organization and to expand improperly DOJ's use of INSLAW's trade secrets.

25. Subsequent to the commencement of INSLAW's Chapter 11 proceeding, DOJ has pursued numerous actions to hinder INSLAW's reorganization efforts. A Brewer assistant has attempted to raid INSLAW employees. DOJ has departed from its regular practice by dispatching counsel to a meeting of creditors at the United States Trustees Office where he pursued a line of inquiry designed to call into doubt INSLAW's ownership of all of its products, thereby damaging INSLAW's reputation and credibility with its creditors and potential customers.

26. After the commencement of this Chapter 11 proceeding, DOJ asserted a counterclaim against INSLAW that it had not asserted previously, in the amount of $1,212,527, the effect of which was further to disparage INSLAW's viability by heightening the concerns of INSLAW's creditors and potential customers regarding INSLAW's ability to recover from its financial difficulties. The validity of DOJ's claim is highly suspect, since DOJ has not filed a Proof of Claim in this Court and the materials available to INSLAW relating to the claim do not reflect a substantial basis for the claim. Even more importantly, DOJ asserted that counter claim as a

pretext to avoid meaningful negotiations in INSLAW's claim, advancing it as an offset to avoid DOJ's obligation to make payment of sums due and owing to INSLAW, some of which had been acknowledged by DOJ to be meritorious.

27. In September 1985, six months after the automatic stay had gone into effect, INSLAW learned that DOJ had copied the software for Enhanced PROMIS and was in the process of installing it in the USAO's in St. Louis and Sacramento without payment of any compensation to INSLAW.

28. In violation of INSLAW's legal rights to license the Enhanced PROMIS software, DOJ has purchased computers for the installation of Enhanced PROMIS at 20 additional locations without payment of any compensation to INSLAW. This installation is being carried out by DOJ employees in violation of INSLAW's rights.

29. Various DOJ personnel have, both before and after the institution of this bankruptcy proceeding, disparaged INSLAW's property. In March 1986, a consultant to DOJ, while acting on behalf of DOJ, disparaged Enhanced PROMIS to other United States Government agencies which were considering buying a license to use it.

30. Brewer's principal assistant has urged the Office of State Court Administration in Pennsylvania not to buy INSLAW's software because DOJ was planning to distribute it at no cost.

31. Upon information and belief, DOJ representatives have repeatedly disparaged and denigrated Enhanced PROMIS and INSLAW in discussions with prospective INSLAW customers.

32. DOJ has also threatened to undertake further actions damaging to INSLAW's property and in violation of the automatic stay. For example, DOJ advised INSLAW that DOJ may release INSLAW's trade secrets to the public under the Freedom of Information Act. DOJ has announced that it will issue a Request for Proposals which calls for development of further enhancements to PROMIS. The development of these further enhancements would entail providing access to INSLAW's property to the contract winner and perhaps to each of the bidders as well.

33. Throughout this period of time, DOJ has benefited handsomely from its use of Enhanced PROMIS. For example, in the Southern District of New York alone, after only one year of operation, Enhanced PROMIS supported an increase from $28 million to $170 million in debt collections.

Wherefore, INSLAW prays for a declaratory judgment that DOJ has violated the automatic stay by the following actions:

(1) Exercising control over INSLAW's property, particularly and specifically INSLAW's privately funded enhancements to PROMIS, without payment of appropriate compensation for that use, to the benefit of DOJ and to the detriment of INSLAW;

(2) Stating, intimating and suggesting to the public, individuals, companies and state and other federal governmental units that INSLAW does not have exclusive and sole property rights in the privately financed enhancements to PROMIS;

(3) Promising, implying, intimating or suggesting to the public, individuals, companies and state and other federal governmental units that it may provide to them INSLAW's privately financed enhancements to PROMIS; and

(4) Offsetting claims due and owing by DOJ to INSLAW against claims allegedly due and owing to DOJ by INSLAW, without prior approval of this Court.

(5) Failing to take such positive actions as would have been necessary to give effect to the automatic stay.

COUNT THREE

For an Order Directing DOJ To Cease and Desist From Further Violations of the Automatic Stay

34. INSLAW incorporates by reference the allegations of paragraphs 1-33 of this Complaint with the same force as if fully set forth herein.

Wherefore, INSLAW prays for an Order

(1) Directing DOJ, and all of its officers, agents, servants, and attorneys, and all persons in active concert with them, not to release, disclose or make available to anyone outside the Department INSLAW's privately financed enhancements to PROMIS, including all of its supporting materials, manuals, diskettes, descriptions and work materials of any kind whatsoever;

(2) Directing DOJ, and all of its officers, agents, servants, and attorneys, and all persons in active concert with them, to cease interfering with INSLAW's current or prospective contractual relations with third parties, and in particu-

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lar restraining them from speaking, writing or communicating about INSLAW or Enhanced PROMIS with third parties in any manner whatsoever;

(3) Directing DOJ, and all of its officers, agents, servants, and attorneys, and all persons in active concert with them, to cease using Enhanced PROMIS without INSLAW's consent;

(4) Directing DOJ, and all of its officers, agents, servants, attorneys, consultants and contractors that Enhanced PROMIS is a trade secret which may not be disclosed to any other person; and

(5) Directing DOJ promptly to make payment to INSLAW of claims due by DOJ to INSLAW, without offset against claims allegedly due by INSLAW to DOJ.

COUNT FOUR

For Damages for Breach of the Automatic Stay

35. INSLAW incorporates by reference the allegations of paragraphs 1–34 of this Complaint with the same force as if fully set forth herein.

36. By the actions detailed above, DOJ has willfully and maliciously violated INSLAW's rights under the automatic stay provision of the Bankruptcy Code.

37. By the actions detailed above, DOJ has caused INSLAW to sustain injuries including but not limited to loss of revenue, loss of contract renewals, loss of company staff, loss of client base, loss of reputation, loss of opportunity to develop an improved product, and loss of joint product development and marketing contracts with significant prospective clients and to suffer humiliation and embarrassment. DOJ's actions have served to deny INSLAW the opportunity to develop as the industry leader in the legal software business.

38. DOJ has undertaken its actions with knowledge that INSLAW had instituted this reorganization proceeding, that the automatic stay was in effect, and that its actions were in violation of the automatic stay.

Wherefore, INSLAW prays for damages against defendants, jointly and severally, in an amount in excess of twenty five million dollars, plus attorneys fees and costs incurred in the prosecution of this adversary proceeding; and punitive damages in the amount of five million dollars.

INSLAW prays that this Court award it such other relief as is deemed just and proper under the circumstances.

DICKSTEIN, SHAPIRO & MORIN,

By Leigh S. Ratiner, D.C. Bar No: 073825, Michael E. Nannes, D.C. Bar No: 941732. 2101 L Street, N.W. Washington, D.C. 20037. (202) 785–9700

DOCTER, DOCTER & SALUS, P.C.,

By Charles A. Docter, D.C. Bar No: 51201, Marcia K. Docter, D.C. Bar No: 96024. Suite 700, 1325 G Street, N.W. Washington, D.C. 20005.

Attorneys for INSLAW, Inc., Debtor in Possession

APPENDIX B

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC, June 18, 1986.

D. LOWELL JENSEN,
Deputy Attorney General, Department of Justice, Washington, DC.

DEAR MR. JENSEN: The following questions arise from reports and pleadings in the bankruptcy suit filed by Inslaw, Inc. against the Department of Justice. Although you are not a named defendant in the action, you are named in documents as someone who contributed to the bankruptcy of Inslaw. Since the bankruptcy complaint was filed two days before your hearing and came to our attention the morning of your hearing, I am submitting these written questions with the expectation of avoiding another day of hearings. Please answer the questions as expeditiously as possible.

1. What was your decision-making and supervisory responsibility over the Department of Justice contract with Inslaw, Inc?

2. a. Did you hire or were you involved in the Department of Justice decision to hire Mr. C. Madison Brewer, III as program manager for the Inslaw contract?

b. When did you receive information that Mr. Brewer's former employer, William Hamilton, the owner of Inslaw, had fired Mr. Brewer for cause?

c. What were your supervisory responsibilities over Mr. Brewer?

3. What were your affirmative responsibilities to Inslaw as the Department of Justice chief policy maker to implement the Inslaw contract?

4. Did you take any affirmative steps to remedy the perceived or actual conflict between Mr. Brewer's relationship with Inslaw and the implementation of the Inslaw contract?

5. a. Did your staff director, Jay Stevens, conduct an investigation into the Department of Justice implementation of the Inslaw contract?

b. What were the findings of that investigation?

c. Was any action taken as a result of that investigation?

6. Do you have any personal or financial interest in the Dalite case tracking system?

If you have any questions, please call my Chief Counsel, Laurie Westley, at 224-6098. Thank you for your consideration.

Cordially,

PAUL SIMON,
U.S. Senator.

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AND INTERGOVERNMENTAL AFFAIRS,
Washington, DC, June 18, 1986.

Hon. PAUL SIMON,
U.S. Senate, Washington, DC.

DEAR SENATOR SIMON: I have asked Deputy Attorney General D. Lowell Jensen to prepare responses to the questions set forth in your letter of today concerning the Department's contract with INSLAW, Inc. As I have mentioned to you previously, the Department's disputes with INSLAW regarding this contract are in litigation before the Board of Contract Appeals and the Bankruptcy Court.

We have responded fully to your inquiries regarding the INSLAW matter. We rely upon you, of course, to discourage any use of the nomination process as a tool for discovery in this litigation.

Sincerely,

JOHN R. BOLTON,
Assistant Attorney General.

Enclosures.

1. What was your decision-making and supervisory responsibility over the Department of Justice contract with Inslaw, Inc.?

The INSLAW contract that you have inquired about was executed and administered by the Justice Management Division for the Executive Office for United States Attorneys (EOUSA). The contract involved the installation of computer software for case management in the United States Attorneys' Offices. I am informed that some of the offices were to utilize the software on computers and approximately 70 offices were to utilize the software on word processing equipment.

As the Assistant Attorney General for the Criminal Division, I may have participated in discussions and meetings in which the EOUSA's case management system was discussed. When I became the Associate Attorney General in July, 1983, I was responsible, among other things, for providing overall supervision and direction to the Executive Office for United States Attorneys. *See* 28 CFR § 0.19(a). This responsibility continued and expanded to include overall supervision of the Justice Management and Civil Divisions when I became Deputy Attorney General in May, 1985. *See* 28 CFR § 0.15(b).

While I was the Associate Attorney General, the contracting officer for the INSLAW contract made the decision to terminate the word processing portion of the INSLAW contract. I did not attempt to change this decision because I was convinced that the termination was justified and in the best interests of the government. For your information, I am told that at the time of the termination, the Department had expended approximately 75 percent of the target costs of the contract, and the software had been installed in only four word processing sites.

I understand that there are presently numerous claims and counterclaims between INSLAW and the Department arising from the termination and other aspects of the contract. These matters are being handled by lawyers in the Justice Management and Civil Divisions. I have been briefed periodically about the status of the negotiations and litigation involving INSLAW, but I have not intervened into either the negotiations or the litigation.

2. a. Did you hire or were you involved in the Department of Justice decision to hire Mr. C. Madison Brewer, III as program manager for the INSLAW contract?

I was not involved in hiring C. Madison Brewer.

b. When did you receive information that Mr. Brewer's former employer, William Hamilton, the owner of INSLAW, had fired Mr. Brewer for cause?

I do not recall when I first learned that Mr. Brewer had previously worked for the Institute for Law and Social Research. It is likely that I was first given this information by INSLAW after problems had developed under the contract. I am presently aware that Mr. Hamilton claims that he fired Mr. Brewer for cause, but I do not know whether this was in fact the case.

c. What were your supervisory responsibilities over Mr. Brewer?

My supervisory responsibilities over Mr. Brewer derived from my supervisory responsibilities over EOUSA. These are described in my answer to the previous question.

3. What were your affirmative responsibilities to INSLAW as the Department of Justice chief policy maker to implement the INSLAW contract?

My responsibilities were to protect the interest of the United States Government and its taxpayers. To the extent that INSLAW asked me to meet with its representatives and to consider its requests, I did so as elsewhere described in these answers.

4. Did you take any affirmative steps to remedy the perceived or actual conflict between Mr. Brewer's relationship with INSLAW and the implementation of the INSLAW contract?

The Department of Justice does not concede that there was a conflict between Mr. Brewer's relationship with INSLAW and the Department's implementation of the INSLAW contract. I am aware that INSLAW claims that Mr. Brewer was biased against them, but I have never seen any evidence that any such bias, if it exists, has affected our handling of the INSLAW contract. For your information, neither the contracting officer for the INSLAW contract, nor the lawyers assigned to the litigation and settlement negotiations, report to Mr. Brewer or EOUSA.

5. a. Did your staff director, Jay Stevens, conduct an investigation into the Department of Justice implementation of the INSLAW contract?

b. What were the findings of that investigation?

c. Was any action taken as a result of that investigation?

As you have been previously informed, I met at INSLAW's request with its representatives. At those meetings, I was asked to entertain INSLAW's proposals for contracts between INSLAW and the Department, and to intercede personally in negotiations between Department attorneys and attorneys for INSLAW.

At my request, Mr. Stevens met with lawyers from the Justice Management Division and the Civil Division to discuss INSLAW's requests. Mr. Stevens advised me that matters were being handled competently and professionally by the assigned attorneys and that there was no occasion for me to intercede personally. My understanding is that Mr. Stevens also advised INSLAW's representatives of these conclusions.

6. Do you have any personal or financial interest in the Dalite case tracking system?

DALITE is a case management system that was developed for the Alameda County District Attorney's Office when I was there. The system was developed with funds provided by the County and by the Department of Justice, Law Enforcement Assistance Administration. The system is unique to that office. I have no financial or other personal interest in DALITE.

1. When did you first come into contact with INSLAW?

I first became aware of INSLAW's non-profit predecessor, the Institute for Law and Social Research, when I was District Attorney in Alameda County, California. Any dealings I had with the Institute at that time were incidental contacts at professional conferences and the like. I did not have any official responsibilities with respect to any Institute or INSLAW contracts until I joined the Department of Justice in 1981.

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC, July 1, 1986.

Hon. ARNOLD I. BURNS,
Associate Attorney General, Department of Justice, Washington, DC.

DEAR MR. BURNS: I write to seek your views concerning a matter that will be within your purview once you are confirmed as Deputy Attorney General.

During the Judiciary Committee's hearing on Lowell Jensen's nomination to the United States District Court, there was some discussion about a lawsuit between INSLAW, Inc. and the Justice Department. I was disturbed to learn that this local enterprise's future was in jeopardy due to a conflict with the Justice Department.

When you become Deputy Attorney General, you will assume responsibility for management of the Justice Department. You will be overseeing the procurement of contracts such as the automated data management system that is at issue in the INSLAW case. Will you familiarize yourself with the facts of this case, take a new look at the possibility of an amicable settlement, and take every reasonable precaution to ensure that similar controversies are avoided?

Will you assure the Committee that the Department will address this INSLAW matter as expeditiously as possible? Will you keep the Committee apprised of the progress of the INSLAW lawsuit?

I would appreciate receiving your response prior to the next scheduled meeting of the Judiciary Committee on July 17, when your nomination will be on the agenda.

With best wishes,

Sincerely,

CHARLES MCC. MATHIAS, Jr.,
U.S. Senator.

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF THE ASSOCIATE ATTORNEY GENERAL
Washington, DC., July 9, 1986.

Hon. CHARLES MCC. MATHIAS, Jr.,
Washington, DC.

DEAR SENATOR MATHIAS: I am in receipt of your recent letter. Thank you for your interest in the *INSLAW* matter.

I can assure you that if I am confirmed as Deputy Attorney General, I will: (1) familiarize myself with the facts of the *INSLAW* case; (2) address the problem quickly; (3) take a look at the possibility of an amicable settlement; (4) advise the Committee, if asked of the status of the case; and (5) take every reasonable precaution to ensure that similar controversies are avoided.

Sincerely,

ARNOLD I. BURNS.

APPENDIX C

U.S. BANKRUPTCY COURT,
Washington, DC, July 17, 1987.

Hon. EDWIN MEESE III,
Attorney General, U.S. Department of Justice, Washington, DC.

Re: In re INSLAW, Inc. Case No. 85-00070

DEAR MR. ATTORNEY GENERAL: Enclosed is a copy of an Order in the above case. Your attention is respectfully directed to the third decretal paragraph on page 3 of the Order, by which this Court "extend[s] an invitation to the Attorney General of the United States to designate an appropriate official outside the United States Department of Justice to review the disputes between INSLAW, Inc. and the Department of Justice and to give the Attorney General independent advice with respect thereto."

Thank you.

Very truly yours,

GEORGE FRANCIS BASON, Jr.,
U.S. Bankruptcy Judge.

Enclosure.

UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF COLUMBIA

Case No. 85-00070

IN RE: INSLAW, INC., DEBTOR

ORDER

Upon consideration of INSLAW, Inc.'s motion for court assistance to obtain independent handling; the opposition thereto of respondents United States of America and the United States Department of Justice; the testimony of witnesses and other evidence presented during the hearing held May 29 and June 1, 2 and 3, 1987; and the Court having found by clear and convincing evidence that, subsequent to the filing by INSLAW on February 7, 1985, of a petition under Chapter 11 of the bankruptcy laws, the United States Department of Justice, acting through its employees, unlawfully, intentionally and willfully sought to cause the conversion of the petition to a Chapter 7 liquidation without justification and by improper means, and for the reasons set forth by the Court in its oral ruling on the motion on June 12, 1987, and on the basis of written findings of fact and conclusions of law consistent therewith to be entered by the Court in due course, it is hereby

Ordered that judgment be and hereby is entered in favor of INSLAW, Inc. and against respondents United States of America and the United States Department of Justice for compensatory damages in the amount of one thousand ($1,000) dollars, together with INSLAW, Inc.'s attorney's fees and expenses incurred as a result of respondents' wrongful conduct and in connection with the prosecution of this motion, pursuant to 11 U.S.C. § 362(h); and it is

Further ordered that the United States Department of Justice and the Executive Office of United States Trustees and their respective employees are hereby enjoined from making contacts of any kind with the Office of the United States Trustee for the District of Columbia and the Eastern District of Virginia relating to the INSLAW, Inc. bankruptcy, other than simple requests for information; and it is

Further ordered that the United States Trustee for the District of Columbia and the Eastern District of Virginia shall promptly report in writing to the Court, to counsel for the Debtor INSLAW, Inc. and to counsel for the unsecured creditors committee, the fact and the substance of any contact received from any person employed by or associated with the United States Department of Justice or the Execu-

tive Office of United States Trustees regarding the INSLAW, Inc. bankruptcy, whether or not the contact involves only a request for information; and it is

Further ordered that this Court's order dated March 11, 1987, solely respecting its provision in subparagraph (4) enjoining the United States Trustee for the District of Columbia and the Eastern District of Virginia from further participation in the INSLAW, Inc. bankruptcy, is hereby vacated; and it is

Further ordered that the said United States Trustee shall be and hereby is restored to his statutory duties in the INSLAW, Inc. bankruptcy case for the purposes of reviewing any disclosure statement issued in connection with a plan of arrangement proposed by the Debtor; reviewing the Debtor's monthly reports; reviewing applications to retain the services of professionals and for professional fees; and monitoring the activities of the unsecured creditors committee; and it is

Further ordered that INSLAW, Inc.'s request for an order prohibiting the United States Department of Justice from filing a proof of claim in the INSLAW, Inc. bankruptcy be and hereby is denied at this time, without prejudice to INSLAW, Inc.'s right to object to or request equitable subordination of any such claim that the United States Department of Justice may hereafter file or otherwise assert; and it is

Further ordered that INSLAW, Inc.'s request that the Court extend an invitation to the Attorney General to designate an appropriate official outside the United States Department of Justice to review the disputes between INSLAW, Inc. and the Department of Justice and to give the Attorney General independent advice with respect thereto is granted; and it is

Further ordered that INSLAW, Inc.'s request for an award of punitive damages under the provisions of 11 U.S.C. § 362(h) is taken under advisement and that INSLAW, Inc. shall file and serve by August 15, 1987, a memorandum of law addressing whether punitive damages may be awarded against the United States or the United States Department of Justice and, if so, what amount would be appropriate under the circumstances found here by the Court, and the respondents may file and serve any opposing memorandum by September 4, 1987; and it is

Further ordered that the Court, in the alternative, finds (in the event it should be determined, contrary to this Court's holding, that relief under § 362(h) is not available) the United States and the United States Department of Justice in contempt of court for violation of the automatic stay and imposes identical sanctions under 11 U.S.C. § 105(a), subject to *de novo* review under Rule 603 of the local Rules of the United States District Court for the District of Columbia; and it is

Further ordered that counsel for INSLAW, Inc. shall within thirty days of the date of this order submit to the Court an application itemizing the attorney's fees and expenses incurred as a result of respondents' wrongful conduct and in the course of prosecuting its motion herein, and that counsel for respondents shall submit any opposition to the amount of such fees and expenses sought within thirty days after the filing of INSLAW, Inc.'s application; and it is

Further ordered that this order shall not become final until the Court rules on the punitive damages issue and establishes the amount of the award for attorney's fees and expenses.

GEORGE F. BASON, Jr.,
U.S. Bankruptcy Judge.

Date: July 16, 1987.

APPENDIX D

IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF COLUMBIA

Adversary Proceeding, No. 86-0069

INSLAW, INCORPORATED, PLAINTIFF,

v.

UNITED STATES OF AMERICA, ET AL., DEFENDANTS

WASHINGTON, DC, MONDAY, SEPTEMBER 28, 1987

Oral argument in the above-captioned matter commenced before the Honorable George Francis Bason, Jr., at 1:10 p.m.

APPEARANCES

On behalf of the plaintiff: Michael E. Friedlander, Esq., Charles R. Work, Esq., McDermott, Will & Emery, 1850 K Street, NW., Washington, DC 20006. James L. Lyons, Esq., Kellogg, Williams & Lyons, 1275 K Street, NW., Washington, DC 20005. Lawrence H. Gesner, Esq., Milbank, Tweed, Hadley & McCloy, 1825 I Street, NW., Washington, DC 20006.

On behalf of the defendants: Dean S. Cooper, Esq., Trial Attorney, Commercial Litigation Division, Department of Justice, Civil Division, Box 875 Ben Franklin Station, Washington, DC 20044.

PROCEEDINGS

The DEPUTY CLERK. First matter is the matter of Inslaw bankruptcy case 85-70; also adversary case 86-0069, versus Department of Justice and the United States.

Will all counsel identify themselves.

Mr. FRIEDLANDER. I am Michael Friedlander. I am here on behalf of Inslaw.

Mr. COOPER. My name is Dean S. Cooper. I am an attorney with the Department of Justice representing the defendants, United States of America and the Department.

The COURT. I will waive the statements by the other attorneys who are present.

The first item that I would like to address this afternoon is in connection with Inslaw's motion for court assistance, and specifically within that item, the application for attorneys' fees. Do the parties wish to add anything to the written submissions in that regard at this time? I think I have read everything that has been submitted up to this moment but there has been quite a flurry of papers. I have read the application and the government's objection and reply by Kellogg, William & Lyons, affidavit by McDermott, Will & Emery, reply of Michael Lightfoot, response of O'Neil & Lysaght.

Mr. WORK. Charles Work for Inslaw. Does Your Honor have the response of Inslaw, Inc. and McDermott, Will & Emory? I didn't hear that on the listing.

The COURT. Do you have a copy?

Mr. WORK. Yes, I do, Your Honor.

The COURT. I do not.

Mr. WORK. I believe that was filed on Friday.

The COURT. Well, I am sorry.

Mr. WORK. Would Your Honor check to see whether the Docter & Salus response is in your stack?

Mr. COOPER. Nor has the government been served with that.

The COURT. No, I don't. If you have a copy.

Mr. WORK. I understand, Your Honor, that attorneys from Milbank, Tweed are here and they would be pleased to address the court on this matter should the court care to hear from them. They did not however, file anything.

Your Honor, as far as Inslaw and McDermott are concerned, we will stand on the pleadings.

The COURT. I think in the interest of time, I will take the matter under advisement at this time as to the precise amount of the fees and simply review the papers. The alternative would be, presumably I would have to take a recess and look these things over and come back and ask some questions and so forth.

Mr. WORK. That is satisfactory.

Mr. COOPER. May I be granted to file a brief reply. I noticed some inaccuracy in some of the pleadings that have been filed in the last day or so. And I will do so certainly by the end of this week.

The COURT. Very good.

Mr. LYONS. James Lyons, for Kellogg, Williams & Lyons. We have filed a reply to the government's objection to our application for fees on Friday, the 25th. I don't know if Your Honor has had an opportunity to review that.

The COURT. That one I did receive.

Mr. LYONS. We will stand on the pleadings subject to the necessity of any response to any points that Mr. Cooper may raise pursuant to his last request.

The COURT. OK. There has to be a point where we stop having rebuttals and so on.

Mr. GESNER. We did not file a response with the thought that we would make a short presentation today. However, in view of Your Honor's statement we would be pleased to file a short response and if you would accept that in a few days, we would be pleased to do so.

The COURT. Yes, by the end of this week.

I did have, with respect to the Milbank, Tweed firm, a couple of problems. My inclination at this time is to disallow any fees in connection with Mr. Gesner's testimony and to require—expect a persuasive explanation concerning why it cost over $3000 to serve two subpoenas, and then, of course, if there is any response to the allegation that some of Mr. Richardson's time was spent on matters other than the pending question—thank you, sir.

Mr. GESNER. Thank you, Your Honor.

The COURT. I think there was one instance where one of the firms was asking a fee for somebody's testimony as a witness, and I would disallow any fee in connection with that unless somebody can show me some persuasive reason why I should allow that. That is my inclination at this point. I will take that matter under advisement at this time and await the memoranda of replies.

Also, in connection with the application for court assistance, the debtor requested the court to defer the matter of the punitive damages until its ruling on the other matters and consider the question of punitive damages for the effort to cause the conversion of the bankruptcy case from chapter 11 to chapter 7 in conjunction with consideration of punitive damages for all the other matters that are alleged. I have received and reviewed the briefs in that regard. At this time I am not fully satisfied that even under the extreme circumstances of this case, which I will go into in awhile, punitive damages are allowable as a matter of law, as against the Federal Government. I have just reviewed very quickly the case of *Young* versus *City of Des Moines* in which the court held that punitive damages are allowable against a governmental unit, although recognizing that the weight of authority is against allowing such damages absent a statute expressly allowing them. I will take the question of those punitive damages under advisement at this time, but I will, notwithstanding that, in connection with my other rulings, direct the entry of final judgment as to the various other claims and remedies that are the subject of this portion of this adversary proceeding and will make an express determination that there is no just reason for delay and an express direction for the entry of judgment all pursuant to rule 54(b) of the Federal Rules of Civil Procedure as incorporated by the analogous rules of the Federal bankruptcy rules.

Now, with respect to the adversary proceeding of Inslaw against the Department of Justice, I will make a generalized statement at this time and will request counsel for Inslaw to prepare a final judgment in accordance with this statement and will follow this statement with detailed written findings of fact and conclusions of law——

Mr. WORK. Your Honor, would you forgive me but the microphone is not working and I have received word that they can't hear you in the back of the courtroom.

The COURT. Is it possible to hear what I am saying now?

I have had some problems with my throat for the past several months and I am sorry, but that may make it a bit difficult to hear me but can the people in the back of the room now hear?

OK, wonderful.

I will make a generalized statement at this time and will follow that with detailed written findings and conclusions.

Let me say in that regard I am grateful to counsel on both sides for the submissions they have made. I know they have been made under enormous time constraints and time pressures and I think an admirable job has been done on both sides in that regard and while I am about it, let me say that I believe that counsel on both sides have conducted themselves in a thoroughly professional manner throughout the course of this adversary proceeding thus far. This court always appreciates it when counsel act in a professional manner.

Now what I am going to do is to request counsel for Inslaw to submit some further documentation to me in the form of an addendum or interlineations to—and identify it as such, to the previously submitted proposed findings and conclusions in accordance with what I am about to say.

At the outset I will observe that it seems to me basically this is a very simple case once the smoke and the dust are cleared away. There are two major points, two major categories of findings and conclusions. Each one of them stands independently of the other, but each one corroborates and verifies the accuracy of the other. The first of those two is that Mr. Brewer, believing he had been wrongfully discharged by Mr. Hamilton and Inslaw, developed an intense and abiding hatred for Mr. Hamilton and Inslaw and when the opportunity presented itself, Mr. Brewer applied for and obtained the job as project manager of the contract between Inslaw and the executive office of U.S. Attorneys of the Justice Department and set out to use that position in order to vent his spleen against Inslaw.

The second basic finding is that the Department of Justice took, converted, stole, Inslaw's enhanced PROMIS by trickery, fraud, and deceit, and the Department of Justice has used and continues to use enhanced PROMIS not only in the 20 U.S. Attorney's offices in which the Department of Justice is under contract entitled to use a different version of PROMIS, but also in a number of other U.S. Attorney's offices; I believe, approximately 45 at the present date.

Now, elaborating upon the first matter, it is simply impossible for this court to accept Mr. Brewer's testimony that he didn't know he was being fired and that he believed that he was quitting voluntarily. It is not the sort of thing that someone can have a misunderstanding about; the statements that Mr. Brewer made to Mr. Gizzarelli in which Mr. Brewer himself acknowledged in part, showed, conclusively and without any question in the mind of this court, that Mr. Brewer was consumed by hatred for and intense desire for revenge against Mr. Hamilton and against Inslaw. Even in his testimony before this court he refered to a belief that Mr. Hamilton had a messiah complex. He acknowledged having said something to Mr. Gizzarelli about Mr. Hamilton being a candidate for MO, mental observation, presumably St. Elizabeths Hospital or similar institution. It is hard to imagine a more compelling showing of bias and prejudice than for one person to make that kind of perjorative comment about somebody else and, of course, there was also the imaginary Inslaw study comparing female and male prosecutors that was entirely a figment of Mr. Brewer's imagination, apparently, unless it was something that was constructed by him on the witness stand in a desperate effort to find some factual basis for his allegations about Inslaw having done unsatisfactory work.

Now Mr. Brewer gave some testimony that was rather puzzling to me and which I can explain only in the following fashion. He testified that there was a change in attitude by all of the people at Inslaw with respect to him after the FBI had interviewed people at Inslaw concerning his prospective employment with one of the U.S. Attorney's offices. I found that rather hard to believe. My conclusion is that Mr. Brewer believed that somebody at Inslaw may have spilled the beans about the fact—to the FBI about the fact that he was really fired and that this was not, as is customary when people are told in effect you can either resign or you will be fired, and naturally, most of them choose to resign. And so Mr. Brewer, I am inferring, feared that there was going to be a revelation to the FBI that in fact he has been fired. Therefore, he testified that there was this change, sudden change in attitude after the FBI interview with Inslaw personnel in case the FBI report were to show that the FBI was told that he was indeed fired rather than voluntarily resigned. So that is one small instance of a factor that—a rather minor factor, in fact that has led to this court's belief beyond any reasonable doubt that, as I said, Mr. Brewer was consumed by hatred and a desire for revenge.

Now, Mr. Brewer's subordinate, Mr. Rugh, and the contracting officer, Mr. Videnieks, were infected with this poisonous attitude by Mr. Brewer and they aided and assisted him and the court cannot escape the conclusion that they did so with full knowledge that his motives included personal vengence, at least as much as any concern about the interests of the Department of Justice. In addition, Mr. Rugh, of

course, had his own personal motive, in that it would certainly help him to build a small empire if the Department of Justice were to take over the job of software development and maintenance with respect to the PROMIS software. As to Mr. Videnieks, his testimony in his deposition makes clear that he regarded himself as a lower level employee dependent on the expertise of others, including specifically Mr. Rugh and Mr. Brewer and dependent on them in all areas about which he had to make decisions as the contracting officer, whether it be all accounting or computer hardware and software and he was dependent on the good will and approbation of Mr. Brewer and Mr. Rugh for his professional livelihood and advancement.

Now with respect to Mr. Brewer's superiors, Mr. Hamilton and Inslaw complained repeatedly about Mr. Brewer's bias and prejudice and a very strange thing happened at the Department of Justice in response to those complaints. Absolutely nothing happened. When Mr. Hamilton personally complained, it was interpreted as being sour grapes or as evidence of bias by Mr. Hamilton and the court can't help referring to the passage about the mote in someone else's eye and the beam in one's eye, Matthew, Chapter VII, verse 3, in that regard.

When somebody other than Mr. Hamilton complained, such as Mr. Jaffe, Mr. Richardson, Mr. Santarelli, that was interpreted as being political pressure, and of course political pressure is something that is unheard of and unthinkable in the Department of Justice.

Inslaw has pointed to government regulations which require referral for an independent investigation by the Department of Justice's office of professional responsibility in the event of a charge of conflict of interest. Now personal bias is the quintessential conflict of interest. Ownership of some stock in a corporation, the view is that this can at least create an appearance of a conflict of interest because the person—the value of the stock may go up depending on the result of what the person does, but there is just no question about actual conflict of interest, when there is personal bias and if somebody is fired from a job, it is hard to imagine anything that would be more likely to create personal bias against a former employer than being fired. So the government official's statements that, no, this really wasn't a conflict of interest because it didn't involve monetary gain simply won't wash and their statements that they didn't investigate anything because they didn't have any substantiation, the substantiation was there; it was indisputable. The investigation, according to the government officials' own testimony, consisted solely of asking Mr. Brewer, were you fired, are you biased? Here we have the chief law enforcement agency of the Federal Government and it is as though they were to go up to any person charged with a crime on the street and say, did you steal this particular item or did you happen to kill so and so, and when he says, no, that is the end of the investigation. I can't imagine that the Justice Department would solve any crimes if that is the way investigations were normally conducted.

Now, it is obvious to this court from personal observation, I believe the gentleman's name was Stewart Shifter, is that correct, he was a high Justice Department official that at one point we had an in-chambers, although on the record, discussion with, in an effort to resolve the dispute through court assisted negotiation and it was obvious to me, simply from observing his demeanor and attitude, that the entire Department of Justice was in a completely defense attitude. He was simply not willing to recognize what in my view is obvious to any outside observer. I was interested to note in Judge Jensen's deposition testimony, at one point he appeared to recognize the general principle that it is a bad idea for, generally, for the government to hire somebody to supervise a contract with that person's former employer simply because either the person is going to be biased in favor of the former employer, or he is going to be biased against the former employer. It is hard for any human being to avoid one or the other of those dangers when he is dealing with his former employer.

As I say, Mr. Jensen, at one point in his deposition, recognized that general principle and asserted that he agreed with it, but I didn't get any hint in his testimony that he recognized that there was any possible applicability of that general principle to the case of Mr. Brewer and Inslaw, and even more amazing to me was the fact that both Mr. Tyson and Mr. McWhorter, who were the people directly responsible for hiring Mr. Brewer, not only did they fail to recognize that general principle, they thought, and expressed the view, that Mr. Brewer's previous employment with Inslaw was a plus factor that should mean that the Justice Department should prefer to hire him over somebody who had no previous connection with Inslaw.

In summary, with respect to the first major point, the failure by high Justice Department officials to take any action even to investigate serious allegations of misconduct, and I may say that that failure continued even after this court's decision in July 1985, which provided some judicial indication that there might be something in

this whole business that would be worth somebody taking a look into. I conclude that the failure even to begin to investigate is outrageous and indefensible. It constitutes an initial—excuse me, an institutional decision by the Department of Justice consciously made at the highest level simply to ignore serious questions of ethical propriety, impropriety, made repeatedly by persons of unquestioned probity and integrity, and this failure constitutes bad faith, vexatiousness, wantoness, and oppressiveness within the meaning of the Aleas Company pipeline case.

Now, Mr. Brewer's lust for revenge manifested itself in a number of ways. There was a document, another one of Mr. Videnieks' smoking guns, that reflects an effort to terminate Inslaw's contract right at the outset when it was about a month old. Of course, all the people who were present at that meeting which Mr. Videnieks wrote his memorandum about have suffered collective amnesia about those events. None of them can remember anything about it, but it is apparent to this court that there is no other reasonable explanation of the meaning of the words that appear on that memo and Mr. Brewer was suggesting a termination of Inslaw's contract for the convenience of the government approximately a month after the contract had been entered into and they all, the government witnesses all testified that would have been ludicrous, that would have been absurd, how could that possibly be.

And I agree, that it would have been ludicrous and absurd. I have no doubt that is the sole reason that it was not carried through. That memo also shows that Mr. Brewer went about, immediately after he came on board, busying himself to find out what other contracts Inslaw had with the Department of Justice and what other—so, the obvious intent was to try to scuttle as many of these other contracts as possible, cut off Inslaw's funding and cash flow, and try to drive them out of business. His continuing hostility and bias is shown else with respect to the controversy over the so-called advance payment clause which could more accurately be called as a prompt payment clause; again, an effort to starve Inslaw of working capital, deprive it of the cash it needed to survive and then, of course, there is modification 12 and the steps that led up to that modification in the contract, the fact that that modification was entered into in fact over the objection of Mr. Brewer who thought as long as you can get the goods why agree to anything and it was his superior who at least utilized the medium of modification 12 to the contract. I will come back to modification 12 with respect to the second major point.

Now, of course, the next thing I have listed in my notes here concerning Mr. Brewer's hostility towards Inslaw is his effort to cause Inslaw's chapter 11 case to be converted to chapter 7 and the assurance that he got from Mr. Stanton that it would be converted within 30 to 60 days. That, of course, is what I found is as a result of the hearings in June of this year and I will repeat those findings as part of my findings with respect to this adversary proceeding and that is certainly something I can take judicial notice of for purposes of the adversary proceeding that is binding between the parties under the rules of collateral estoppel.

Then, I am a little hesitant to mention the next item because it does involve an inference on my part that the impetus for the request made by Inslaw's—by the Department of Justice's counsel in this case to require Inslaw to divulge trade secrets in July of 1985 and the impetus for the appeal from my adverse decision in that respect, which I only became aware of recently—there are a lot of things that get filed in the clerk's office that I don't know about, and, of course, when it is an appeal from my decision I don't have anything further to do with it and there is no reason for them to advise me of the fact that an appeal has been filed. But, at any rate, it seemed to me at the time of that argument that government counsel simply was not presenting any logical argument as to why the government or anybody else, for that matter, needed to know these items which were obviously in the nature of trade secrets and where the bankruptcy code contains a specific provision allowing the court to keep under seal items that consisted of trade secrets—there was just no coherent argument presented in that regard, it seemed to me. I am inferring that Mr. Brewer was the impetus for those—for that request made of the court to require Inslaw to divulge its trade secrets. It just struck me that it was such an off the wall request, and then when I found out that an appeal had been taken from the decision, I was even more amazed, particularly in view of the fact that my order specifically included a provision that if anybody had a particular need for any particular item, they could come before this court at any time and show what that need was. If, as I infer, Mr. Brewer was the impetus behind that request, it seems to me that this is another demonstation of the Department of Justice, or Mr. Brewer, through the Department of Justice, seeking to do something which was not of any legitimate benefit to the legitimate interests of the Department of Justice but was simply designed to drive Inslaw out of business.

Well, that concludes my comments with respect to Mr. Brewer's bias, and I turn now to the question of the Department of Justice's actions in wrongfully taking enhanced PROMIS by trickery, fraud and deceit. In this regard, it appears to this court that the relevant legal principles are clear, simple and basically undisputed. Certainly there is nothing complex and nothing requiring the expertise of any specialized agents such as the Contract Appeals Board in order to understand and apply the relevant principles relating to public domain, copyright, trade secrets, and so forth. It is all set out, as I understand in the *Bell Helicopter-Textron* case, to the extent that there could be any legitimate controversy about legal principles. The basic legal principles are that anybody has a right to use material that is in the public domain. Ordinarily when somebody produces something for the government pursuant to a contract with the government it is—what is produced is in the public domain unless the contract specifically provides otherwise.

Now, the second legal principle is that it is possible for a private party to take something that is in the public domain and elaborate on it, add to it, change it around, and the resulting product is something which is copyrightable or patentable or a legitimate subject of trade secret protection, as the case may be.

So that the private party has the right then to sell the whole package, including those items that are in the public domain. There was a rather interesting recent decision involving the West Publishing Company in which one of our courts of appeals, not the one upstairs, held that West Publishing Company had a protectable copyright interest in the page numbers of its texts of judicial opinions. Now, of course, judicial opinions are in the public domain. Regrettably for me I cannot sell to anyone whatever opinions I render, but West Publishing Company can, because they take that material and add to it head notes and digests and other things, including page numbers. I think it was West, in its capacity as a vendor of computer legal research products, was suing a competitor to prevent that competitor from indicating on each page of the competitor's product the page number of the Federal report or State report, as the case may be, which a particular language appeared, and the court held that West did have a copyright protection in simply the page numbers. So no matter how minor an enhancement to PROMIS might be, this court is of the view that the enhancements are entitled to trade protection.

Applying those legal principles to the facts of this case, Inslaw's original PROMIS was in the public domain. Inslaw made enhancements to PROMIS over the years. Some of those enhancements were also in the public domain. Some of them, however, were financed entirely with private funds or were financed entirely with a combination of private funds and government—under government contracts which permitted, specifically permitted Inslaw to retain private rights. Those latter enhancements were not in the public domain but were Inslaw's private property and those are the proprietary enhancements which form the major part of Inslaw's present claim against the Department of Justice.

Now there has been rather elaborate, extensive testimony that demonstrates beyond any doubt that it would have amounted to corporate suicide for Inslaw to allow the Department of Justice to have unlimited rights to those proprietary enhancements and there is no doubt in this court's mind that both Mr. Brewer and Mr. Hamilton were acutely aware of that fact and that is the reason that Mr. Brewer was determined to get those private enhancements and that is the reason that Mr. Hamilton was determined not to let Mr. Brewer get those private enhancements. Inslaw's original contract with the executive office of U.S. Attorneys did not require Inslaw to deliver to the executive office those proprietary enhancements and it gave the Department of Justice no right to use the proprietary enhancements. Inslaw advised the executive office, both before and after the contract was signed, that it had available, for sale, at an additional charge to the Department of Justice, those proprietary enhancements and that Inslaw would be delighted to sell those additional proprietary enhancements to the executive office.

Now, let me say in that regard a couple of things. I was struck by the testimony of Robert Whitely, one of the government witnesses who was a Justice Department auditor during the relevant period, both when Inslaw was contracting with LEAA and when it was contracting with the executive office of U.S. Attorneys and others, and he made the comment at one point during his testimony that we would complain about not having been informed of something and they would say, well, we told you about that 2 years ago, and sure enough, when we looked back, there it would be in some form or another. So I think that one of the major bones of contention here which I am not sure ultimately has determinative significance anyway, but one of the major bones of contention is whether or not Inslaw said to the Department of Justice before the contract was entered into that here are these private enhancements and they are not part of the contract, but you can have them if you

want to pay extra for them, and Mr. Brewer and Mr. Videnieks said, they never told us that, and then, here are the documents that show in fact Inslaw did tell them that before the contract was entered into and there was an exchange of correspondence and so forth.

Now, the second thing that I thought I would mention at this point is perhaps only an analogy, and I haven't got it fully developed, it is not a perfect analogy but let's take the case of—I think before I start with this I should say that at the outset it was not possible for Inslaw to supply to the Department of Justice precisely what the Department of Justice was entitled to get under its contract simply because the Department of Justice, first, had to obtain from other vendors the hardware that was needed to run Inslaw's software. Both—I guess it was a mini-computer that was needed and also, of course, the word processing element for the other 74 or so offices of the Department of Justice. None of that hardware had been bought at the time Inslaw was supposed to start providing the software. So what they did was, as an interim arrangement, was for Inslaw to use facilities that it had in order to permit the government to have the benefit of the use of the Inslaw software. So let us take the case of an automobile dealer and the contract calls for a bottom of the line model of the car, no radio, no air-conditioner, regular gear transmission. The customer is going to furnish, eventually, let us say, an alcohol powered engine to run this vehicle, but in the mean time, the dealer says, well, look, here is what I will do for you. While you are waiting for this engine to be delivered and installed, I want you to take a look at this car that has a radio, that has an air-conditioner, that has automatic transmission, and you can take it for a test drive, and until your other equipment comes in, you can use this better model and then when the time comes, you decide whether or not you want to have this bottom of the line model that you contracted for or whether you really wouldn't be better off with the better, top of the line, model.

So the customer drives off with the car and that is the last the dealer ever sees of him.

I think that is approximately what the Department of Justice has done in this case.

Under modification 12 to the contract, Inslaw delivered the enhanced PROMIS to the Department of Justice on the basis of an explicit commitment by the Department of Justice and in my view there were three components to that commitment; some were implicit, some were explicit; first, to bargain in good faith, to identify which enhancements, if any, were indeed proprietary enhancements; that is, not funded at all by any government money except in those few instances where the government contract explicitly allowed retention of private proprietary rights.

Secondly, once the enhancements are identified, the government had a period of time to decide which of those enhancements it wanted to use. Thirdly, the government was obliged to bargain in good faith as to the price, and Inslaw was obliged to bargain in good faith as to the price the government would pay for those specific enhancements that the—proprietary enhancements that the government decided it wanted to use.

Now, the government's stated concerns about Inslaw's financial viability in this court's view were simply a smoke screen and those stated concerns could have been fully met simply by placing the product in escrow with some third party. That was not acceptable to the government, and in this court's view, the only reason it was not acceptable to the government was expresed in another one of Mr. Videnieks' smoking guns, namely, let's get the goods. Once the Department of Justice did get the goods, namely, the proprietary enhancements, the Department of Justice thereupon refused to bargain in good faith with Inslaw and instead engaged in an outrageous, deceitful, fraudulent game of cat and mouse, demonstrating contempt for both the law and any principle of fair dealing.

Now I say that in view of the exchange of correspondence and the internal memorandum from Mr. Rugh relating to this subject whereby the Department of Justice took the tack with Inslaw following—having gotten the goods, that was designed to be most harmful to Inslaw without any conceivable concomitant benefit to the government following from that posture other than desire to get away with taking something without right. Mainly the Department of Justice pretended to find fault with Inslaw's methodology for approving the private funding and at the same time refused to divulge to Inslaw what the fault was that it found and, again, to use an analogy, it seems to me it is like a spoiled child whose parent says what flavor of ice cream would you like and the kid is screaming and the parent says, will vanilla? How about chocolate? Well, what would you like? I am not going to tell you but I will keep on screaming until you find the right one and give it to me.

The bottom line is that the Department of Justice has kept Inslaw's proprietary PROMIS, has used it, is using it, intends to continue using it, and at the same time denies any ownership rights by Inslaw.

Before I turn to the question of remedies, I would like to say a few—quite a bit more than a few, words about credibility. Having observed the witnesses very closely during the trial, I have come to definite and firm convictions based on the demeanor and expressions of those witnesses, as well as an analysis of the inherent probability or improbability of their testimony in light of the documentary evidence and other known facts. I will at this time simply go through the list of all of the 23 witnesses, beginning with the first one to testify, Mr. Hamilton. I found Mr. Hamilton to be a most impressive witness. I fully subscribed to Elliot Richardson's characterization of Mr. Hamilton's abilities, that he has an exceptionally good memory, an extraordinary ability to remember details of events that may have happened years ago with precision. I believe that his testimony with respect—with respect to all of these witnesses, my belief concerning their testimony is based on the factors I indicated, demeanor, expressions, probability or improbability of the testimony.

I believe that Mr. Hamilton's testimony is accurate in all or almost all respects, even after taking into account the natural human tendency to put forth one's best foot and emphasize those things favorable to one's own cause.

As to Mr. James Rogers, I have no reason to doubt his testimony. It appears to be straightforward and fits with the known facts.

As to Mr. John Gizzarelli, I have no reason to doubt the major portions of his testimony. It does seem that his recollection is not as good as Mr. Hamilton's. There may be occasional inaccuracies in recollection but it is impossible for this court to conclude that Mr. Gizzarelli is inaccurate in his detailed and substantiated testimony describing Mr. Brewer's intense—the manifestations in Mr. Gizzarelli's presence and to Mr. Gizzarelli by Brewer, demonstrating Brewer's intense hatred of Mr. Hamilton. Mr. Gizzarelli is no longer an employee of Inslaw and there is no reason to slant his testimony one side or the other and come out with any personal interest gain.

As to Elliot Richardson, the court was very impressed by Mr. Richardson's testimony. Even in the short period of time that he appeared before this court, the court got the sense that Mr. Richardson is an absolute rock of integrity. I have no doubt that Mr. Richardson's testimony was absolutely reliable insofar as Mr. Richardson recollects relevant events.

As to the testimony of Dean Merrill, I have no reason to doubt his testimony. It appears to be perfectly straightforward and fits with the known facts.

I make the same finding with respect to Mr. Harvey Cherses, Bellie Ling, Ms. Marian Holton.

With respect to the testimony of Mr. Thomas DiLutis, the expert witness on behalf of Inslaw, the court was impressed with his credentials or expertise in the area concerning which he testified and the court believed that he conducted himself with a tenable aura of impartiality and the court found his testimony very believable.

Now with respect to the testimony of Mr. Laurence McWhorter, I regret to say that this court found Mr. McWhorter's testimony totally unbelievable, for a variety of reasons. First off, he said he didn't remember anything. Here was a man who was Mr. Brewer's immediate supervisor for a period of years during the course of this contract, but all he remembers about the contract is one phone call that he says he had with Mr. Hamilton before the contract was even entered into and it was brought out on cross-examination that in his deposition he had said I don't remember, or I don't recall or I don't know something like 147 times, with respect to questions having to do with the contract whose performance he was supposed to be involved in supervising. His testimony is contradicted not only by Mr. Hamilton but also in one respect by Mr. McWhorter's own supervisor, Mr. Tyson. Finally, it was brought out that Mr. Brewer was a member of Mr. McWhorter's wedding party and that Mr. Brewer had advanced money to Mr. McWhorter in the form of buying into a real estate partnership with Mr. McWhorter. So for all these reasons, the court finds Mr. McWhorter's testimony in all relevant substantive respects to be totally unbelievable.

The court regrets to say that it makes the same finding with respect to Mr. James Kelly, much more so than Mr. Brewer, Mr. Kelly's hatred of Mr. Hamilton oozed from every pore. It was tangible; it was palpable. It was obvious this was a very bitter man who was eager to find any loophole that might exist to evade his ethical responsibilities as a lawyer not to reveal the confidences of a former client. Mr. Kelly was obviously eager to say anything that he thought might harm Mr. Hamilton, so long as it would sound plausible. In addition to that, it appears that Mr.

Kelly is heavily involved with—may be the chief executive officer of an outfit that is at least partially in competition with Inslaw and also, it appears that he is a friend or casual acquaintance of Mr. Brewer, a next door neighbor of Mr. Brewer at a beach house at one of our resorts, Rehobeth or Ocean City.

The next witness to testify was Mr. Jack Rugh. I suppose it will come as no surprise if I say that I believe that Mr. Rugh was a biased witness in view of that I have already said with regard to Mr. Brewer's bias in affecting Mr. Rugh and Videnieks and what I have already said with respect to Mr. Rugh's ambitions to carry on the project in-house and thereby build his own little empire. Now his testimony is at odds with the written contract, and I will explain a couple of examples of that. First, there was a section 3.2.4.3 of the contract which provided that Inslaw was supposed to provide the executive office with error free software and then the term error free was defined. It is simply, in this court's review, contrary to the written terms of that contract to say, as Mr. Rugh testified, that that contract means that Inslaw was obliged to fix any bugs in the generic software, regardless of whether they were reported to Inslaw by the executive office or somebody else under some entirely different contract. That is not what the contract says. As Mr. Hamilton pointed out in his testimony, an interpretation that the contract means that is contrary to the logic of the competitive bidding process, because anybody else that might have gotten the contract which Inslaw did have would not have access to reports of bugs by other people who had contracts with Inslaw besides the executive office.

Secondly, when the contract was canceled as to the word processing portion of the contract, I don't see how there could be any question that when you have a contract that is in two parts and one has to do with 20 offices and the other has to do with 74 offices and you cancel the part that has to do with the 74 offices, what you are left with is the part that has to do with the 20 offices. But Mr. Rugh interpreted, as I think I would put the word interpreted in quotes, the contract differently. I find that construction implausible. Of course, we have the principle that a contract is construed more strongly against the drafter and that principle applies to government contracts as well as to others. But even without that rule, it seems to this court that it is very implausible to construe this contract any other way than the way I have indicated and I find Mr. Rugh's construction most implausible. I find also implausible his denial that Mr. Brewer was—had any bias against Inslaw or that he had any knowledge of any bias by Mr. Brewer against Inslaw. Mr. Brewer's actions over the course of this contract seem to me shouting bias again and again and again.

Again, Mr. Rugh suffered from the collective amnesia that I referred to earlier and it seems to me that that is a further indication of unreliability of testimony.

Now the next witness to testify was Mr. William Tyson and among other things he testified that Brewer's attitute toward Inslaw was positive, constructive and favorable in every way. There that is so ludicrous that there is no way that I can believe anything the man has to say. Beyond that, he displayed an extraordinarily blase attitude toward serious allegations of personal bias by Mr. Brewer towards Mr. Hamilton and towards Inslaw. He didn't check it out, he told his subordinate to check it out. He never followed up to find out what the result was. He accepted Mr. Brewer's statement that he wasn't biased and he hadn't been fired, and that was the end of the matter as far as he was concerned.

Well, the next witness was Mr. Brewer and I think I have some comments regarding him. I found his testimony to be most unreliable, entirely colored by his intense bias and prejudice against Mr. Hamilton and against Inslaw.

Now the next government witness was Mr. Robert Whitely and we have finally come to a government witness in this case that I believe substantially told the truth. I have no reason to doubt his testimony except for the fact that he was, and continues to be, the Department of Justice employee. It appears to this court—I don't say that in the sense it might be taken. The Department of Justice is one of the litigants and anybody who is an employee or is a principal of a litigant could be expected to have some feeling of wanting to put things in a good light for his or her employer. I feel that is what happened in the case of Mr. Whitely, that his testimony appeared to be generally truthful. There may have been some slanting in favor of the Department of Justice but I certainly would not think that he consciously testified falsely.

Now, the next witness, Mr. Peter Videnieks, the court believes that Mr. Richardson and Mr. Gizzarelli were accurate in their description of the relationship of Mr. Videnieks with Mr. Brewer. Mr. Videnieks was under Mr. Brewer's domination and affected by Mr. Brewer's bias and this court is grateful—he displayed an amazing lack of recollection of pertinent facts, but the court is very grateful that he did not

shred any documents. The next witness was Mr. James Mennino. I found his testimony absolutely incredible. It was totally unsubstantiated and obviously biased. The court draws the inference, although Mr. Mennino denied that this was his motive, sometimes actions speak pretty loudly—he did two things. He tried to hand over some dirt about Inslaw to Mr. Rugh, and he tried to get from Mr. Rugh some of Inslaw's product, and he says there was no connection between those two events, although they occurred contemporaneously. The court infers that he was trying to sell information for other information. When Mr. Rugh asked him to substantiate his charges, he didn't respond. He came down here from Massachusetts or New Hampshire, I believe, left all—he said he had all the substantiating information where he came from, but he didn't think it was important to bring it down here—or he didn't think to bring it down here, at any rate, so the court doesn't—besides that, the allegations that he made relate to a different time period than the time of the contract at issue, I believe, and to different contracts.

Mr. Vito diPietro was the next witness. The court has no reason to doubt his testimony except for the fact that he was and still is an employee of one of the litigants.

Hugo Gagliardi was an expert witness. The court discounts his testimony and believes it is entitled to very little weight for three reasons: First, Dr. Gagliardi was heavily influenced in his view of this case by what this court regards as a viciously inaccurate characterization of Inslaw's position in this case that was provided to Mr. Gagliardi by Mr. Rugh. Secondly, Mr. Gagliardi assumed the role of an advocate for the government and there was not even any pretense of impartiality in his testimony.

Thirdly, the court believes that Mr. Gagliardi reached speculative conclusions on the basis of inadequate factual premises.

The next witness was Alan Gibson. The court believes that Mr. Gibson is an honest man who testified honestly but that Mr. Gibson is not an expert qualified to give an opinion concerning the adequacy of Inslaw's methodology for determining the source of funding for individual enhancements to the promised software. In addition, he is an employee, or was an employee, of one of the litigants.

The next witness was Janet Pasciuto. This court finds it extraordinary that an ethics officer of the Department of Justice would treat as so casual as Ms. Pasciuto did, as well as all of the other Justice Department people Inslaw dealt with in this regard, that they would treat so casually the repeated serious allegations of outrageous misconduct by Mr. Brewer and this court views with considerable skepticism her entire testimony in view of what can perhaps even charitably be described as willful blindness to the obvious.

Geraldine Schacht was the next witness. The court believes that she was an honest person who testified to the best of her recollection and the court has no reason to doubt her testimony. She was a former Department of Justice employee but was now retired and this court did not have presented to it any indication that she woud have any reason to favor one or the other of the two parties to the litigation.

Joyce DeRoy was the next witness and essentially the same comments apply to her. She was a former Inslaw employee and at the time of her testimony apparently was involved to a limited extent with an outfit that is, to a limited extent, a competitor of Inslaw. If anything, her testimony would be expected to be slanted against Inslaw but I did not find that to be the case.

Then there were some people that were recalled that had testified earlier. That concludes my recitation concerning credibility of witnesses. I will move on finally to the question of remedies.

Let me ask: In Inslaw's supplemental proposal for relief, there are some statements about a standard license agreement. Can counsel for Inslaw advise me as to whether there is simply one license agreement that applies across the board to everybody who had contracts with Inslaw?

Mr. FRIEDLANDER. Yes, Your Honor, for the current time and for some time there is one license that applies to anyone, including any government agency that seeks to obtain the promised software. It is a standard terms and conditions. It is also sold at a standard price but in terms of the—price is not an issue.

The COURT. The price is the same regardless of whether it is a Federal Government agency, State government, private party?

Mr. FRIEDLANDER. That is correct. The only difference is if you buy more than one there is a single discount to the additional. If you bought ten, they would be at a given price, and the next nine would be at a difference price. But the terms and conditions, who owns it and what you can do with it, those are standard, whether you are State government, Federal Government, a division of the Department of Justice or another company.

The COURT. Are there other divisions or offices within the Department of Justice that have entered into this?

Mr. FRIEDLANDER. I believe the land bureau is a current license holder. If I could confer with Mr. Hamilton, I believe there are several.

Mr. COOPER. Your honor, before Mr. Friedlander continues, may I note an objection, the court has stayed count four of the compliant which was to deal with the damages issue. We have conducted no discovery on this issue. We were not prepared to try that issue until later on. In effect it seems that the court is asking for testimony that would be relevant to such a stage of the proceeding through representations of counsel. I would just like to note for the record that the government objects to that.

Mr. FRIEDLANDER. Just to conclude, Your Honor, the land division of the Department of Justice does hold a license, but it did not purchase a separate license. It existed in the earlier stage and just simply assumed the same licensing terms so it has not paid anything new. We are currently close to concluding a licensing arrangement, standard licensing arrangement with the Army Corps and I believe that has been announced and published in the normal publications but that will be a standard licensing arrangement with the Federal Government agency.

The COURT. The Army Corps of?

Mr. FRIEDLANDER. I think it is the Army Corps of Engineers.

The COURT. Mr. Friedlander, do you wish to offer any response to Mr. Cooper's oral comments?

Mr. FRIEDLANDER. Yes. So the court is clear, we did suggest to this court a substitute form of remedy, and the reason we did is because we believed that given the history of the relationship between the parties, that the likelihood of sitting down and working out licensing terms and licensing payment would be a fruitless exercise and indeed, as soon as—not only do we believe that, but moments after we informed the court we received the papers from the Department of Justice in which they said they have no intention to enter into any such licensing agreement; there is no need nor any 60 days, which is precisely what we anticipated.

We sat down and said what have they done? They have taken our property and assumed the license. Now they can have the license. Why make up new terms and conditions for the Department of Justice. They will have the same reasons that anyone else has. In terms of the licensing terms and conditions, we see no reason why this court at this stage of the proceeding and recognizing the bifurcation, why this court cannot order that kind of relief. It is not monetary in nature. As to the standard price, that could be offered at the next phase of the hearing which we would hope would be relatively soon, depending on the court's schedule, but that is a simple matter of proof which we will offer in no time at all but we don't ask the court—if Mr. Cooper objected to that item, he is correct, there is no proof today in the record of that dollar amount, but it is a standard amount. Everyone pays the same price.

The COURT. Let me refer to a recent decision by the Ninth Circuit Court of Appeals decided August 7, 1987, *in re Computer Communications Incorporated,* 824 F.2d 725. There the Court of Appeals held, under the pre-1984 statute, that a party who violates the automatic stay may be held in contempt and the court may award damages to compensate the debtor for the actual loss suffered. So that does lend additional support to the court's view of this case.

The court will render the following relief: First a declaratory judgment in favor of Inslaw, in that Inslaw is the sole owner of the proprietary enhancements to PROMIS, and the detailed findings of fact which are to follow, will specify exactly which of the claimed proprietary enhancements the court finds indeed to be proprietary enhancements.

Secondly, the court will render a declaratory judgment that the Department of Justice has wrongfully exercised dominion and control over Inslaw's enhanced PROMIS, and has violated the automatic stay thereby.

Third, the court will issue an injunction that the Department of Justice is bound by the terms of Inslaw's standard license agreement to compensate Inslaw for all use of enhanced PROMIS at least from the date of the bankruptcy petition, when the automatic stay went into effect, until the present date, and for so long in the future as the Department of Justice continues to use enhanced PROMIS. The court refers to the case of *University Computing Company* versus *Youngstown,* 405 F.2d 518, which is one of the cases cited by Inslaw with respect to that particular remedy.

The precise amount that must be paid, I think by the representations of both counsel, pursuant to that enforced license, will be the subject of a later hearing before the court.

In view of the willful, wanton, deceitful acts of the Department of Justice in this regard, this court will not allow the government the option of simply going back to the use of the old contractually entitled PROMIS at the expense of Inslaw. That option may be exercised only by the government's paying Inslaw in advance for the expense of extracting contractual Inslaw from enhanced Inslaw. The government will remain liable for the continued use of enhanced PROMIS. I think I may have said Inslaw instead of PROMIS.

Will remain liable for use of enhanced PROMIS during the reasonable period of time that it would take Inslaw to accomplish that unscrambling of the eggs.

The court will enjoin the Department of Justice from disclosing or delivering enhanced PROMIS to any other entity.

The court will grant injunctive relief of the nature set forth on pages 68 and 69 of Inslaw's post-hearing brief, namely, enjoining further participation by Brewer, Videnieks and Rugh in any effort to negotiate a settlement of the cases pending before this court, in any decisionmaking or strategy discussions or preparations of the government's case for DOCKETRACK or any odd phase of this adversary proceeding, in any decision or consideration of whether and to what extent DOJ will use PROMIS, including but not limited to decisions to maintain, upgrade, expand or replace PROMIS; enjoin further participation by Mssrs. Brewer, Videnieks, and Rugh in any consideration or administration by the Department of Justice of any future contracts with Inslaw; enjoin any interference by any of them and by the executive office in any attempts by Inslaw to market PROMIS to other government agencies including but not limited to Department of Justice and individual U.S. Attorney's offices.

In general, disqualifying Mssrs. Brewer, Rugh and Videnieks from any participation at any level or in any capacity other than as evidentiary witnesses with reference to any proceedings before any tribunal or with reference to any decisions by the Department of Justice concerning Inslaw, Mr. Hamilton or PROMIS or anything else having to do directly or indirectly with Inslaw, Mr. Hamilton or PROMIS. There is a case called *Air Transport Association of America* versus *Hernandez* 264 F. Supp. 227, a 1967 decision of the U.S. District Court for this district that bears to some extent upon the issue of disqualification and recusal. It is not precisely on point.

Now the court will also include in this judgment to be entered at this time an award of attorneys' fees and expenses and costs in favor of Inslaw and against the Department of Justice.

Now, in the interest of expedition, it seems to me that it would be appropriate to—for counsel to submit a form of judgment with a recitation that findings of fact and conclusions of law will follow in due course and with a further provision for determination of the precise amount of the award for attorneys' fees and expenses and costs as well as the precise amount of the license fees pursuant to the injunction that I described earlier all at a later date but not delaying the entry of a final judgment with respect to the other matters pending all of those things being done. Are there any questions?

Mr. COOPER. Your Honor, when does Your Honor intend for the injunctive relief that Your Honor mentioned to take effect? Do I understand that Inslaw is going to put together a proposed form of order and those injunctions will take effect once the court reviews that and reviews the language in that order and then signs it or what does Your Honor intend?

The COURT. Mr. Friedlander?

Mr. FRIEDLANDER. We will very expeditiously provide the court with the draft proposed final judgment and findings, perhaps in less than a week to ten days. We would not object to the injunctive relief waiting that so that it comes together with the written findings and there is complete documents, so to speak.

The COURT. Very well.

[Bench conference in closed session.]

The COURT. Are there any other matters having to do with Inslaw versus Department of Justice adversary proceeding or the Inslaw case? It should be brought to the attention of this court at this time.

Mr. FRIEDLANDER. We have none, Your Honor.

The COURT. We will take a short recess until—and then resume with the next case on the court's calendar.

[Whereupon, at 3:10 p.m., the proceeding was concluded.]

CERTIFICATE

I, Cathy Jardim, Official Court Reporter for Miller Reporting Company, Inc., hereby certify that I recorded the foregoing proceedings; that the proceedings have been reduced to typewriting by me, or under my direction, and that the foregoing transcript is a correct and accurate record of the proceedings to the best of my knowledge, ability and belief.

CATHY JARDIM.

APPENDIX E

[From the Los Angeles Times, Oct. 12, 1986]

SUIT CLAIMS EX-JUSTICE OFFICIAL HELPED FORCE FIRM INTO BANKRUPTCY

(By Bill Farr and Mark Landler)

WASHINGTON.—The former No. 2 official in the U.S. Justice Department has been accused in a $30-million lawsuit here of helping to force a computer company into bankruptcy court.

The target of the accusation, contained in a civil damage suit filed June 9, is D. Lowell Jensen, who was appointed to the U.S. District Court in San Francisco in July by President Reagan after serving for five years in the top echelon of the Justice Department.

Jensen is not named as an individual defendant but the suit contains specific accusations of bias and misconduct against him that allege he participated in decisions that "propelled" the computer company toward bankruptcy.

His accuser is William A. Hamilton, president of Washington-based INSLAW Inc., developer of a sophisticated computer system called PROMIS that is used to manage criminal and civil cases, and to collect $250 million that is owed to the government.

The feud that prompted the lawsuit has been festering for almost two years and is the subject of concern at the highest levels of the Justice Department. Atty. Gen. Edwin Meese III will soon be asked to help resolve the dispute out of court, informed sources said.

INSLAW filed for bankruptcy in 1985 after the Justice Department held up $1.2 million in payments to the company at the direction of C. Madison Brewer II, supervisor of the department's use of PROMIS and other information systems. He, too, is charged in the suit with being biased in decisions involving PROMIS, which stands for Prosecution Management Information System.

Brewer had been fired in May, 1976, as INSLAW's general counsel "for not being able to do the job," Hamilton said in an interview. Six years later, Brewer joined the Justice Department. The suit alleges that he should have been disqualified from handling PROMIS contracts because of prejudice against INSLAW stemming from his dismissal there.

Jensen has been a critic of PROMIS ever since he tried to start a competing computer system in early 1974 while he was in the Alameda County prosecutor's office, where he served 12 years as district attorney before his 1981 appointment by Reagan.

He tried unsuccessfully to persuade then-Los Angeles County Dist. Atty. Joseph Busch and his San Diego counterpart, Edwin Miller, to adopt Jensen's competing system instead of PROMIS.

Jensen also was unsuccessful in his bid to have the California District Attorney's Assn. adopt his computer system for use in the state's 58 counties.

Brewer had direct responsibility for running PROMIS and, in his executive position, came in frequent contact with Jensen, the senior member of the PROMIS oversight committee.

At the time of the payment cutoff almost 75% of INSLAW's annual $8 million in business was done with the Justice Department and its U.S. attorneys' offices. INSLAW also now has a contract for computer-related work with the giant Aetna Insurance Co.

PROMIS has been operating for the last 15 years in the Los Angeles County district attorney's office, the largest local prosecution agency in the world and 55 other local prosecutors' offices, including San Diego.

THREAT TO "GIVE AWAY" SECRETS

According to the suit, Brewer has threatened to "give away" the system's trade secrets to other criminal justice agencies. He has defended the proposed move on grounds that INSLAW has no right to charge license fees for its software.

Brewer and the Justice Department say, in court documents, that INSLAW, a private profit-making corporation since 1981, had developed PROMIS with government grants while INSLAW was still the nonprofit Institute for Law and Social Research.

Therefore, the government's legal theory goes, INSLAW does not have the right to charge license fees, and that is the main reason payments were stopped.

Hamilton concedes the original PROMIS system was developed with funding from the now-defunct federal Law Enforcement Assistance Administration. But in court documents there is evidence that "more than a thousand discrete enhancements" to PROMIS have since been made by INSLAW with private financing.

"If they get away with this, they can take what they want from PROMIS for free and give it to others for free," Hamilton said. "We are talking about millions of dollars. That just isn't fair. We've earned both our outstanding technological reputation and the money they owe us."

U.S. Bankruptcy Judge George Bason Jr., who is presiding over the proceedings, stated in a July 11 written opinion that a possible "personal vendetta" was being conducted against Hamilton.

Elaborating on this point, Judge Bason wrote: "The Court finds highly credible the testimony of [Hamilton]. The Court believes the motivation of the Justice Department is extremely suspect . . . possibly because of a personal vendetta by a former employee [Brewer] of the debtor [Hamilton] who is now an employee of the Dept. of Justice."

Hamilton supports his contention that Brewer should have been disqualified by pointing out in the suit that for a period in 1982 Brewer was barred from PROMIS dealings by another high-ranking Justice Department attorney.

But Brewer was later allowed to handle PROMIS matters, the INSLAW suit states, because "Jensen, having previously developed a negative attitude toward INSLAW's product, failed to take action to insulate the administration of the program from Brewer's bias."

"I don't think he [Jensen] has ever forgiven me nor INSLAW for his lack of success" with Jensen's computer system, Hamilton said in an interview, "and I think the evidence is clear that our troubles with the Department of Justice stem from that and the bias Brewer has against us for firing him."

Hamilton's accusations of bias were put before Jensen by U.S. Sen. Paul Simon at Jensen's confirmation hearing before the Senate Judiciary Committee in June. They were answered in writing on his behalf by Assistant Atty. Gen. John R. Bolton.

Bolton replied in a letter:

"Mr. Jensen . . . is fully satisfied with the propriety of his actions. . . . Mr. Jensen has neither been involved in nor attempted to influence the handling of [the PROMIS-related] proceedings."

Contacted in San Francisco, Jensen said: "Given my current position on the bench, I am going to have to rely on Mr. Bolton's reply to the Judiciary Committee. It speaks for itself as a defense."

In response to a Times inquiry, Brewer replied: "I really would like to give you our side to this story because we have a good defense, but the department's policy is that we don't comment on litigation while it is in progress."

That policy was reiterated by a dozen other Justice Department officials The Times questioned.

RICHARDSON AN ALLY

One of INSLAW's major allies in the battle with the Justice Department is the department's former leader, Elliot Richardson, who served as U.S. attorney general under President Richard M. Nixon.

"Somebody over at justice [department] is just being pigheaded about settling this dispute in a fair way," Richardson said.

Judge Bason heard oral arguments Sept. 26 on the Justice Department's motion to dismiss INSLAW's suit as groundless. He is expected to hand down his ruling this week.

[From the Washington Post, Mar. 29, 1987]

JUSTICE EMBROILED IN DATABASE SUIT

INSLAW CHARGES FORMER EMPLOYE HELPED SCUTTLE MAJOR CONTRACT

(By Mark Potts)

Inslaw Inc. is a uniquely Washington company.

It began life in 1974 as the nonprofit Institute for Law and Social Research, developing a computer program for the Justice Department's Law Enforcement Assistance Administration to track the progress of cases through the criminal justice system.

Over time, the project, known as PROMIS, became a widely praised statistical database. With the computer program, a prosecutor's office could automate such housekeeping tasks as keeping track of the timetable of a case, automatically notifying attorneys involved, and keeping a record of the reasons cases are won, lost or dismissed.

PROMIS became a star at LEAA. Many of the political pronouncements on national crime in the 1970s were based on data gathered by PROMIS. The program won praise from the Ford, Carter and Reagan administrations alike.

One fan was Attorney General Edwin Meese III. In an April 1981 speech, when he was special counselor to the president, Meese told a group of local, state and federal law enforcement officials that "what the PROMIS program and what Inslaw has done provides one of the greatest opportunities for success in the future, because it has to do with good planning and good use of management information."

Soon after, LEAA was dissolved by the Reagan administration. At the urging of top LEAA officials, however, PROMIS lived on. The institute was incorporated as Inslaw to market PROMIS software to law enforcement agencies.

With offices in downtown Washington, Inslaw spent $1 million on improvements to PROMIS over the next few months, according to William Hamilton, the company's president and cofounder.

By March 1982, the company won its first big contract—a $10 million, three-year agreement with the Justice Department to install PROMIS in the offices of the nation's 94 U.S. attorneys. Inslaw seemed on its way to what one of its lawyers later described as potentially a "several hundred million dollar company."

But things didn't work out that way. Inslaw is now in bankruptcy and locked in an acrimonious court fight with the Justice Department. The department claims the company defaulted on its contract by failing to install PROMIS on schedule and overcharging the government. It also accuses the company of illegally attempting to sell software developed under government contract.

Inslaw tells a different story. Its executives claim Inslaw is the victim of a personal vendetta by a former Inslaw employe who oversaw the contract for the Justice Department and by former deputy attorney general D. Lowell Jensen, now a federal judge, who developed a similar but commercially unsuccessful case-tracking system during the 1970s.

The company claims the vendetta has influenced other Justice Department officials, preventing Inslaw from reaching a settlement with the department and disrupting its bankruptcy case.

The government denies the charges, and Jensen and other officials accused by the company did not return phone calls seeking comment.

Federal Bankruptcy Judge George Bason Jr. has ruled that "the motivation of the Justice Department is highly suspect." And earlier this month, Bason took the highly unusual step of temporarily removing control of the case from the office of the U.S. bankruptcy trustee, saying he feared that the trustee's position could be compromised by interference from the Justice Department.

The subsequent legal fight has lined up some big names in the legal community on both sides of the issue.

Inslaw allies include a number of former high-ranking Justice Department and LEAA officials, who have gone to the department on the company's behalf. One ally is former attorney general Elliot Richardson, who serves as a special counsel to the company. "I'm convinced they've not had a fair shake," Richardson said recently. "On the contrary, they've been the victim of, at best, bureaucratic stonewalling, and at worst bad faith."

Washington attorney Charles Work, a former president of the D.C. Bar Association who served as deputy administrator of LEAA when PROMIS was being developed, said: "It is truly an offensive, outrageous situation that the Department of Justice has created here, and I do not understand why it has happened. I do not

understand why an organization I considered a great resource to the American criminal justice system has been decimated by a former employe, and I do not understand why the Department of Justice, as an entity, has let that happen."

Inslaw's contract called for the installation of an enhanced version of PROMIS on minicomputers at the 20 largest U.S. attoreny's offices, and on Lanier word-processing equipment at the 74 other offices.

The deal seemed jinxed from the start. Even before it won the contract, the company was arguing with Justice Department officials that it would be difficult to modify the program to run on machines built primarily for word processing. According to Hamilton, word processors were "a totally inhospitable and inefficient habitat for the software." As a result, he said, development of the word-processing software lagged behind the rest of the project.

Another dispute broke out two weeks after Inslaw won the contract. The company asked the Justice Department for a ruling on whether it could sell a version of PROMIS to other customers, on the grounds that the modifications made by the company in the program over the previous year had changed it significantly from the system developed when Inslaw was receiving federal funds through LEAA.

Hamilton said C. Madison "Brick" Brewer, the deputy director of the executive office for U.S. attorneys, which was administering the contract, "raised holy hell" about the suggestion.

Brewer was a former Inslaw employe. Between November 1974 and May 1976, Brewer had been general counsel of the institute, According to court papers, he was "dismissed for cause."

Attempts to reach Brewer for comment on Inslaw were unavailing.

The Justice Department will not say why Brewer was allowed authority over a contract involving a company from which he had been fired. But Justice Department officials did remove him from the argument over whether Inslaw could sell the software. That dispute appeared to be resolved a few months later, when a Justice lawyer gave the department an opinion that Inslaw could market the enhanced versions of PROMIS to other customers, Brewer continued his other supervisory roles over PROMIS.

Another of Inslaw's problems with the Justice Department stemmed from delays in the implementation of the minicomputer version of PROMIS, which Hamilton says was held up through the latter half of 1982 because the Justice Department had not yet decided what computer system to buy. In the meantime, PROMIS was run on a central computer system, accessible by the U.S. attorney's offices through remote terminals.

In late 1982, the Justice Department, apparently frustrated by the slow speed of the implementation of PROMIS, asked that Inslaw turn over to it the latest version of the software.

The company balked, saying it would do so only if Justice rewrote the contract to reflect the earlier opinion that the company had permission to market the program to others. But the department refused.

At that point, Hamilton said he believed Brewer was blocking the contract modification, and he began complaining to department officials about Brewer's involvement in the Inslaw contract.

Hamilton visited Brewer's boss, William Tyson, director of the Justice Department's executive office for U.S. attorneys, in May 1983, and said he found him sympathetic to his complaints about Brewer. But according to an affidavit by Hamilton in the bankruptcy case, Tyson told the Inslaw president that Brewer "was not Inslaw's only problem."

"Mr. Tyson went on to explain that there was a 'presidential appointee in the current administration' who was so antagonistic to PROMIS and Inslaw that the very survival of the nationwide PROMIS installation project was in jeopardy," according to the affidavit. "Mr. Tyson said further that he had had to maneuver to keep the unnamed 'presidential appointee' away from meetings of the United States attorneys in order to keep the 'presidential appointee' from poisoning the well for the PROMIS project."

Tyson did not elaborate, and Hamilton says he was unable to figure out who Tyson was talking about until two years later. Tyson could not be reached for comment.

Brewer continued to oversee the Inslaw contract. In court documents responding to Inslaw's suit, the Justice Department has denied repeatedly that Brewer was biased against the company.

Nevertheless, the disagreements between Inslaw and the Justice Department continued. In June 1983, the Justice Department held back about $1 million in payments to the company, claiming that there had been cost overruns on the version

that was being run on the central computer pending installation of minicomputers in the U.S. attorneys' offices. When Inslaw complained, some of the money was released, but then the cycle began again.

There were other disputes as well. In early 1984, the government held the company in default because of the delays in converting PROMIS to word processors. It then canceled that portion of the contract. Inslaw subsequently laid off one-third of its 180 employes.

At times, Hamilton says, Inslaw thought about breaking the contract. But because the Justice Department accounted for more than 70 percent of the company's business, Inslaw couldn't afford to do it. "We were in a Catch-22 situation," Hamilton said.

Instead, the company tried to bring pressure to bear on the Justice Department to iron out the contract problems.

Beginning in late 1983, Richardson and other former Justice Department officials sympathetic to the company began visiting the department to complain about Brewer and to attempt to settle Inslaw's problems.

But their efforts didnt' seem to help. The Justice Department officials they visited "would seem to be receptive enough at the time—friendly, you know, courteous," Richardson said. "But the results, I think I would have to say, they were characterized by long delays and lack of responsiveness on the merits. . . . I never got straight or convincing answers to the contentions we made about Inslaw."

In February 1985, with the Justice Department holding back several million dollars in payments, Inslaw filed for protection from its creditors under Chapter 11 of the federal bankruptcy code.

Despite the protection of the bankruptcy filing, Inslaw's problems continued.

Negotiations with the Justice Department over the alleged overcharges foundered. And the company fought to keep Justice from being listed as a creditor, arguing that the financial information the department could obtain as a creditor might give it an unfair advantage in the negotiations.

Bankruptcy Judge Bason agreed, ordering in July 1985 that the Justice Department be barred from access to Inslaw customer lists and financial documents being held by the U.S. bankruptcy trustee.

"The court believes the motivation of the Justice Department is extremely suspect," Bason said in a strongly worded order. "It appears to the court that the Department of Justice seeks the information for the purpose of gaining leverage in its pending contract dispute with the debtor . . . and possibly because of a personal vendetta by a former employe of the debtor who is now an employe of the Department of Justice."

Inslaw, in the meantime, continued to try to plead its case to the higher reaches of the Justice Department, including a letter to Meese from former LEAA Administrator Donald Santarelli, an advisor to the company. Meese did not respond.

Richardson paid visits to Jensen, then the department's No. 2 official, in March and December 1985 to complain about Brewer and Inslaw's problems with the department. Jensen has said he saw no conflict involving Brewer.

Last summer, in a written response to Sen. Paul Simon (D-Ill.), during the confirmation hearing on his federal judgeship, Jensen said, "I am aware that Inslaw claims that Mr. Brewer ws biased against them, but I have never seen any evidence that any such bias, if it exists, has affected our handling of the Inslaw contract."

Inslaw changed law firms in early 1986, and Hamilton says that in reviewing the case with the new lawyers, he concluded that Brewer might not be the only one at the Justice Department with a reason for bias against Inslaw. Recalling the two-year-old statement that a higher-level Justice Department official was biased against the company, Hamilton began to wonder about Jensen.

During the 1970s, when Inslaw was developing PROMIS, Jensen, then district attorney in Alameda County in northern California, developed his own computerized case-tracking system, DALITE, and tried to market it against PROMIS.

Jensen didn't have much success—today, Alameda County is the only major prosecutor's office using DALITE—but Hamilton said Jensen had continued to "disparage" PROMIS in a variety of forums, including the December 1985 meeting with Richardson.

Jensen has said he has no financial interest in DALITE. He declined to return a reporter's phone call seeking comment on Inslaw.

Last June, Inslaw sued the government, alleging that Jensen and Brewer's bias against the company helped push it into bankruptcy. The suit, filed as an "adversary proceeding" in bankruptcy court, also alleged that the Justice Department had hindered Inslaw's efforts to reorganize under bankruptcy laws by negotiating in bad faith.

In its answer to the suit, the government denied the charges and said that Inslaw's problems were strictly the result of the company's inability to live up to the terms of its contract.

Trial in the suit, which currently is scheduled for July, has been delayed by a number of continuing disagreements between Inslaw and the Justice Department.

On Friday, Bason postponed until late May a hearing into a request by Inslaw that the Justice Department somehow be forced to handle the case and negotiations on a settlement without interference from department officials, such as Brewer, with a possible stake in the case.

Inslaw requested the postponement after a federal bankruptcy judge recanted the testimony he had given a few days earlier that he was aware of an attempt by the Justice Department to force the company to liquidate. The company also said that a Justice Department official had declined to answer questions in a deposition on the case because he feared he would be fired. Because of those developments, Inslaw said it needed more time to prepare its case alleging interference.

Inslaw has continued to operate during the protracted bankruptcy process, relying on contracts to provide case-tracking software to a variety of customers ranging from local and state governments to foreign law-enforcement officials and Aetna Life & Casualty Co.

Hamilton says the company has enough business to keep going, "but it's always a struggle."

And for all the controversy, PROMIS seems to remain a popular program. Over Inslaw's objections, the Justice Department has been expanding the computer-based PROMIS system beyond the 20 offices for which it was originally contracted.

Law enforcement and even some Justice Department officials continue to praise the system, and it has been credited with helping to collect more than $250 million in previously uncollected fines and fees in its first full year of operation.

"Inslaw has done some truly seminal work in the field," Work said. "The criminal justice research that their systems were responsible for has led to some very interesting reforms and improvements. I just don't understand how the Justice Department can ignore those contributions through the years and let them go down the drain."

[From Legal Times, Oct. 12, 1987]

MESSY INSLAW FIGHT ENGULFS DICKSTEIN

FORMER CLIENT CLAIMS CRONYISM BY FIRM LED TO BUM ADVICE

(By Aaron Freiwald)

A Washington, D.C.-based software company's stormy battle with the Justice Department over a canceled $10 million contract now threatens to engulf a prestigious D.C. law firm and several of its prominent partners.

Inslaw Inc., once under contract to install case-tracking systems in U.S. attorneys' office, on Sept. 28 won a major victory when a federal bankruptcy judge here held that the Justice Department used "trickey, fraud, and deceit" to force Inslaw into bankruptcy.

The judge, George Bason, Jr., blasted unnamed high-ranking department officials for "an institutional decison made at the highest level simply to ignore serious questions of ethical impropriety."

Now, D.C.'s Dickstein, Shapiro & Morin, which in June 1986 brought the initial Bankruptcy Court complaint against the Justice Department on behalf of Inslaw, faces harsh accusations—so far unsubstantiated—from its former client that its representation was compromised by the firm's political ties to the Justice Department and Attorney General Edwin Meese III.

Inslaw's president, William Hamilton, charges in interviews with *Legal Times* that Dickstein partner and Reagan administration faithful Leonard Garment forced Inslaw's lead counsel, Leigh Ratiner, who had pursued the case vigorously, to withdraw from the firm partnerhsip. The firm denies the charges.

It must be stated, again, that Hamilton's charges are unsubstantiated. They are significant because they threaten to drag Dickstein and Meese deeper into the Inslaw controversy. The charges have not been incorporated in any court filing.

Hamilton alleges that Garment, who has represented Meese and is close to other top Reagan administration officials, thwarted Ratiner in order to shield Justice De-

partment officials from the unflattering allegations raised by Hamiltion in Inslaw's suit.

Hamilton also complains that Dickstein was not working in his company's best interest when lawyers earlier this year strongly urged Inslaw to settle out of court its dispute against the Justice Department.

Hamilton rejected that advice, sought new counsel and ultimately prevailed in court.

"Dickstein should have gracefully withdrawn from representing us because of the potential embarrassment over their friendship with Attorney General Meese." Hamilton says. "That's why there are conflict of interest rules."

In particular Hamilton says Garment tried to protect longtime Meese friend, former Deputy Attorney General D. Lowell Jensen, who was implicated in Inslaw's lawsuit against the Justice Department.

Jensen, now a U.S. district judge in San Francisco, has repeatedly denied allegations that he sought to force Inslaw into bankruptcy and that he was motivated by a longstanding personal grudge against Hamilton and Inslaw. In the mid-1970s, Jensen, then district attorney in Alameda County, Calif., developed a rival case-mangement software system. He could not be reached for comment.

Dickstein, meanwhile, has filed a creditor's claim in Bankruptcy Court seeking $464,000 for its Inslaw work. Hamilton could raise his conflict-of-interest charges in an effort to block Dickstein's claim.

But Hamilton says a fee dispute with Dickstein is not behind his charges against the firm.

Frederick Lowther, Dickstein's managing partner, agrees that Hamilton's complaints are probably not motivated by the outstanding bill.

What continues to fuel Hamilton's ire at Dickstein is his belief that after Ratiner's departure from the firm, Dickstein failed to pursue Inslaw's case vigorously and then pressed Inslaw to reach an out-of-court settlement with the Justice Department for far less than Hamilton thought Inslaw could win in court. In both instances. Hamilton believes that Dickstein's connections to Meese and the Justice Department may have contributed to what Hamilton and other Inslaw lawyers describe as Dickstein's lackluster representation of the company.

"Inslaw needs to have a full acccounting from Dickstein, Shapiro to determine whether extraneous concerns affected our representation," Hamilton offers.

Bankruptcy Judge Bason awarded Inslaw as yet unspecified damages and all of its attorney fees. A separate hearing is scheduled to consider punitive damages. Hamilton has calculated that the award will be at least $5.4 million, even if the judge does not levy punitive damages. The Justice Department has said it will appeal Bason's ruling.

At Dickstein, Garment and other firm leaders emphatically deny having done anything that would have hurt the interests of their former client or have violated conflict-of-interest rules. To the contrary, they argue that Dickstein provided the crucial groundwork on the case that led to Inslaw's court victory.

Ratiner's withdrawal from the firm, says Dickstein's Lowther, was in no way related to the Inslaw case. "That decision was made by Leigh and by us over a long period of time," says Lowther, declining to elaborate. Ratiner formally left the firm in May.

Garment, a member of Dickstein's management committee, also refused to discuss why Ratiner left the firm.

"There's a partnership contract attached to his withdrawal with a negative covenant on it," says Garment, who describes the covenant as "an agreement that neither side will say publicly things about the other side."

But Garment flatly denies that Dickstein partners forced Ratiner out because of Inslaw. "That's not correct," he says of Hamilton's accusation.

Ratiner, now president of LSR Enterprises, an Annandale, Va.-based company that makes filing systems for lawyers, declines to discuss details of his departure from Dickstein.

Pressed to respond to Hamilton's claim that Garment forced him out because of his work for Inslaw, Ratiner says only, "I don't have any evidence to support that theory."

But Inslaw President Hamilton insists that Garment engineered Ratiner's departure because of Garment's sensitivity to the bad publicity the Justice Department was starting to receive over the Inslaw controversy.

Three other lawyers currently involved in different aspects of the Inslaw case—none of them at Dickstein—say that Ratiner complained to them that Garment had instigated Ratiner's departure from Dickstein because of his aggressive tactics in representing Inslaw.

LATEST CHAPTER IN A BITTER SAGA

The nasty feud between Dickstein and Inslaw is only the latest installment in a bitter saga in which the integrity of high-ranking officials has been called into question.

Inslaw, founded by Hamilton in 1973 as a non-profit entity, went-for-profit in 1981 after the source of its federal funding, the Law Enforcement Assistance Administration (LEAA), was cut from the Reagan budget. It prospered for a time, particularly after landing in 1982 a $10 million contract to install case-tracking software, known as PROMIS, in the 94 U.S. attorneys' offices. At the time, the contract was the largest ever awarded by the Justice Department.

The Justice Department, however, later suspended payments, claiming Inslaw had failed to meet its contract obligations. With the company entangled in a protracted contract dispute, Inslaw in February 1985 filed for bankruptcy.

Dickstein was hardly the first major firm to go to bat for Hamilton. His dispute with the Justice Department has attracted a coterie of powerful Washington lawyers. Former Attorney General Elliot Richardson, a partner in the D.C. office of Milbank, Tweed, Hadley & McCloy, and Donald Santarelli, a well-connected Republican lawyer and partner with D.C.'s Santarelli, Smith, Kraut & Carroccio, have advised Inslaw in its dealings with the Justice Department.

Harvey Sherzer, first as a partner with San Francisco's Pettit & Martin and then with D.C.'s Howrey & Simon, provided Inslaw's outside corporate counsel, and, through the end of 1985, was chief negotiator for Inslaw in its complex contract dispute with the Justice Department.

Dickstein came into the picture when Inslaw decided to seek litigation counsel after negotiations between Inslaw and the department broke down in late 1985. Despite its talent for hardball litigation, Howrey & Simon was out of the running: Inslaw by then had filed for bankruptcy and could not come up with the legal fees already owed Howrey & Simon—around $75,000, according to a source at the firm.

Howrey & Simon was reluctant to take on a contingent-fee case with a company in bankruptcy, despite Sherzer's good relations Hamilton, say several Inslaw lawyers.

"There is a certain reticence on the part of some firms to litigate with bankruptcy clients," says Charles Docter, of D.C.'s Docter, Docter & Salus, Islaw's current bankruptcy counsel.

In January 1986, Elliot Richardson brought Dickstein's Ratiner to the defense of Inslaw. Ratiner—a Dickstein partner since 1977, who knew Richardson from their days as negotiators on the Law of the Sea Treaty—said that he would take the case despite Inslaw's financial condition. A retainer agreement was signed Feb. 5, 1986.

RIGHT MAN FOR THE JOB

In many ways, Ratiner, 48, was the ideal lawyer for the job: aggressive, smart, prone to pounding his fist on the table to underline a point.

But Ratiner also had a reputation at Dickstein as something of a maverick, a man with a sizable ego and few close friends within the firm.

An April 22, 1982, profile in *The Washington Post* introduced Ratiner, on leave from Dickstein so that he could return to the Law of the Sea talks, as a man who "drives three motorcycles and a sportscar, wears a gold chain around his neck, and answers to the nickname 'Black Prince.' "

Garment, the former White House Counsel to President Richard Nixon, was livid over the 1982 *Post* profile of Ratiner, according to a Dickstein source, because the "Black Prince" sobriquet did not fit the image Garment was trying to build for his firm.

But while bad blood may have developed between Garment and Ratiner, in 1982 Garment agreed to help Ratiner with his new client, Inslaw. According to Garment, Hamilton, and Justice Department officials, Garment arranged for Ratiner to meet with Stuart Schiffer, a deputy to Richard Willard, the assistant attorney general for the Civil Division.

Ratiner, accompanied by junior partner Michael Nannes, showed Schiffer the Inslaw complaint, which was ready for filing in U.S. Bankruptcy Court and which alleged that the Justice Department had stolen Inslaw's PROMIS software after canceling Inslaw's government contract.

"We did not receive any reaction [from Schiffer] in the sense of, 'Please don't file this complaint,' " recalls Nannes, Dickstein filed Inslaw's complaint the day after the Schiffer meeting, June 9, 1986.

After a summer of exchanging motions in court, Hamilton says, E. Robert Wallach, a Dickstein lawyer entangled in the Wedtech affair, appeared on the scene.

With Garment's assistance, Wallach had joined Dickstein as of counsel in early August 1986. Ratiner, who knew Wallach was close friends with Meese, asked if Wallach could impress Inslaw's position on senior Justice Department officials, says Hamilton.

Wallach vowed to speak to Jensen—who had already become a federal judge in San Francisco—and then to take Inslaw's case to Meese and to Jensen's replacement as No. 2 in the department, Arnold Burns, Hamilton states in a deposition taken by Justice Department lawyers as part of the bankruptcy proceeding.

After vacationing with Meese in Jackson Hole, Wyo., and taking a brief trip to Europe, Wallach met on Sept. 25 with Ratiner and Nannes about Inslaw, according to Hamilton.

At that meeting, Wallach related that the Justice Department would not settle with Inslaw, say Hamilton and Nannes.

Wallach also told Ratiner, according to Hamilton, that Jensen would always be involved in the Inslaw dispute, even as a judge in San Francisco.

Nannes says he does not know to whom Wallach spoke or on what basis he formed this conclusion about the Justice Department's posture. But Nannes says he never challenged Wallach's assessment because it made sense at that time.

"We felt we were going to have to slug it out on the [Justice Department's] motion to dismiss, before a favorable settlement could be reached," says Nannes.

Wallach, reached last week at his San Francisco law office, denied any involvement. "I did not talk to Arnie Burns. I did not talk to Lowell Jensen. And I do not have any recollection of Inslaw at all," Wallach said.

In Justice Department responses to Inslaw interrogatories last summer, Burns and Meese say they have no recollection of conversations with Wallach relating to Inslaw.

Despite Wallach's conclusion that the Justice Department was not inclined to settle with Inslaw, Hamilton says, Dickstein lawyers subsequently pressed on several occasions for a settlement along lines Hamilton says were highly unfavorable to Inslaw.

On Jan. 15, 1987, Nannes asked Hamilton to sign over authority for Dickstein to negotiate on behalf of Inslaw. Nannes proposed seeking $1 million—of which nearly half would have gone to cover Dickstein's fees—and a stipulation from the Justice Department that Inslaw owned the proprietary rights to the contested PROMIS software.

Hamilton rejected the settlement proposal because, he says, the $1 million would have barely covered attorney fees and would not have begun to compensate Inslaw for the use by Justice of the software throughout the dispute. Within days, he sought out new representation, at the D.C. office of Chicago's McDermott, Will & Emery, where partner Charles Work took over the case and continues as Inslaw's lead counsel. Work brought in D.C.'s Kellogg, Williams & Lyons as co-counsel.

"Dickstein said either you give us authority to settle at this ridiculously low level or we will seek to withdraw," says Work. Hamilton's response, says Work, was "Don't bother."

Garment's role in the case remains a source of controversy because of his close ties to Meese, who has not recused himself from the Inslaw case, according to Amelia Brown, a department spokeswoman. Meese and Jensen are also close personal friends.

A Justice Department response to an Inslaw interrogatory last summer reveals that Meese and Garment conferred by telephone about Inslaw at least once in the fall of 1986. This was after an article in *The Los Angeles Times* spotlighted Inslaw's allegations against Jensen and the department. Garment also spoke with Deputy Attorney General Arnold Burns, the interrogatory reveals.

But, says Hamilton, neither he nor Ratiner was ever informed of Garment's contacts.

"I think it's amazing that it was never revealed to the client," says Work, Inslaw's current lead counsel. "Sometimes things slip, but not something like that," he adds.

Garment acknowledges that he spoke to Burns, but he recalled the Meese conversation only after being told of the response by the Justice Department to the Inslaw interrogatory. "Maybe I talked to him, I don't know. I talk to a lot of people," says Garment.

"It seemed to me it was a case that had some merits and that they [the Justice Department] should look into the facts and try to settle it," Garment adds.

But Hamilton believes Garment's conversation with Meese may have sparked a decision by Dickstein's leaders to pursue his claims less vigorously. Dickstein's managing partner Lowther says this claim is ridiculous.

"The notion that we were involved in a highly charged political situation is just wrong," Lowther says. Besides, he adds, "This firm didn't view this as an unusual case, [and] we're often in controversial cases with the Justice Department."

But Hamilton claims that after Ratiner ceased playing an active role in the case, Dickstein lost interest in pursuing Inslaw's litigation.

Hamilton says, for example, that Lowther promised at a Nov. 21, 1986, meeting to provide senior litigation counsel to replace Ratiner on the case. This never happened.

Work, a former president of the D.C. Bar, says the Dickstein team, short the active involvement of a senior attorney, was too inexperienced to handle the case.

"They were talented younger lawyers," says Work, "but Dickstein representatives acknowledged to us at one point that none of them were first chair material for this case."

Lowther defends the firm's decision to stick with the legal team it had already assembled: Nannes; associate Ronald Perkowski; and Richard Conway, now a partner in the firm's Vienna, VA, office, who had a limited role in the case.

Had Dickstein stayed with Inslaw into trial, the firm "would have committed the resources to do it," says Lowther, "but we don't have any clients where I devote nine lawyers early on, especially a client in bankruptcy."

Moreover, adds Lowther, "We didn't view [Ratiner's] departure as a major obstacle to the case."

Just as Dickstein maintains that Ratiner's departure from the firm—and his leaving the Inslaw case—had nothing to do with Inslaw, Lowther argues that the firm's decision not to continue its representation of Inslaw into trial was reasonable and entirely defensible.

Lowther says Dickstein fulfilled its obligation to Inslaw, first by drafting a novel complaint, then by establishing Inslaw's right to action in Bankruptcy Court and by blocking the Justice Department's motion to dismiss; Judge Bason denied that motion last December.

"If you look at the retainer agreement," adds Lowther, "we agreed to take the case up to trial, and then we reserved our right to decide [whether to continue on through trial]."

Junior partner Nannes says the decision not to continue representing Inslaw came some time in early January of this year, when "the relationship was deteriorating." Both Nannes and Lowther decline to elaborate.

Hamilton counters that Dickstein decided not to pursue the Inslaw case even before lawyers had a chance to examine fully Justice Department documents.

"On the eve of finally being able to see the documents [in early January], they came to us and told us it was time to settle," says Hamilton.

Nannes concedes: "No one can say we took the case all the way through discovery." Yet he maintains that Dickstein lawyers did conduct an "extensive" examination of the "roomful of documents" the Justice Department released in discovery. "We certainly didn't skimp on resources in getting ready for trial," Lowther adds.

But Work contends that he had to muster a team of lawyers to replace Dickstein to take 45 depositions before trial; the trial date was postponed to July 20 of this year.

The ever-critical Hamilton is now more than happy with Work and his current legal team. Judge Bason's September ruling granted Inslaw practically everything it asked for, including attorney fees, which Hamilton estimates total $1.5 million, including Dickstein's $464,000 claim. As vindication, Hamilton cites the unusually harsh criticism of the Justice Department that is contained in Judge Bason's ruling.

Hamilton says he would have been denied such vindication if he had followed Dickstein's advice to settle nine months ago.

"We were stunned," says Hamilton of Dickstein's final settlement proposal. "We were left, a company in bankruptcy, to find new counsel right in the middle of litigation."

[From the Washington Post, Oct. 6, 1987]

THE INSLAW CASE

[Editorial]

The judge didn't mince words. The defendant, he said, "took, converted, stole" the plaintiff's property "by trickery, fraud and deceit." The defendant made "an institutional decision . . . at the highest level simply to ignore serious questions of ethical

impropriety, made repeatedly by persons of unquestioned probity and integrity, and this failure constitutes bad faith, vexatiousness, wantonness and oppressiveness." The defendant also engaged "in an outrageous, deceitful, fraudulent game of cat and mouse, demonstrating contempt for both the law and any principle of fair dealing." And who do you suppose this defendant is—a corporation set up by the mob to swindle widows? A brokerage house stealing from clients and trading on insider information? Not at all. The culprit is the United States Department of Justice.

U.S. Bankruptcy Judge George Bason used these terms in a recent ruling against the department. The plaintiff was Inslaw, a corporation that had developed software that is widely used by prosecutors to track the progress of cases and compile information about caseloads, dispositions, characteristics of offenders and other material. Inslaw is now in the process of reorganizing in bankruptcy because of problems involving a contract with the Justice Department. The contract, which accounts for 70 percent of the corporation's business, called for Inslaw to install its software system in the offices of each of the 94 U.S. attorneys. Judge Bason found that the company was the victim of bias on the part of C. Madison Brewer, who had been fired by Inslaw and then hired by the Department of Justice to supervise the software contract. Over the course of several years, department officials had been challenged about the apparent bias of Mr. Brewer—the judge found that he "was consumed by hatred for and intense desire for revenge against" the president of the company—but undertook no real investigation. Moreover, the department continued to use Inslaw's property without compensation.

These are not simply charges; they are a judicial finding. While the department will undoubtedly appeal the judgment and the order to pay substantial damages, a more immediate public accounting is in order. Why was Mr. Brewer hired for this particular job in the first place? Why did no one at the department take seriously the charges of conflict of interest? What steps are being taken to provide a permanent mechanism within the department for reviewing charges of this kind?

[From Barron's, Mar. 21, 1988]

Beneath Contempt—Did the Justice Department Deliberately Bankrupt INSLAW?

(By Maggie Mahar)

"A very strange thing happened at the Department of Justice . . ."

What that very strange thing was was described in clear and exhaustive detail in Judge George Bason's blistering ruling before a packed Washington, D.C., courtroom last September. In a quiet voice, Bason, a 56-year-old federal bankruptcy judge with a reputation for being meticulous in his judicial approach, told the astonishing story of INSLAW vs. the United States of America.

In his ruling on the case, Bason explained how "through trickery, deceit and fraud," the U.S. Department of Justice "took, converted, stole" software belonging to INSLAW, a Washington-based computer software firm. In 1982, INSLAW signed a $10 million contract to install its case-tracking software, PROMIS (Prosecutor's Management Information System) in the Justice Department's offices. But instead of honoring the contract, Bason asserts, Justice officials proceeded to purposefully drive the small software company into bankruptcy, and then tried to push it into liquidation, engaging in an "outrageous, deceitful, fraudulent game of cat and mouse, demonstrating contempt for both the law and any principle of fair dealing."

Ultimately, the series of "willful, wanton and deceitful acts" led to a cover up. Bason called statements by top Justice Department officials "ludicrous . . . incredible . . . and totally unbelievable."

Some of the evidence against the department came from one of its own. During the course of the litigation, Anthony Pasciuto, deputy director of the department's Executive Office for United States Trustees, met secretly with INSLAW's president, William Hamilton. At that breakfast meeting at the Mayflower hotel, Anthony Pasciuto told Hamilton and his wife, Nancy, how the Justice Department had pressured Trustee officers to liquidate their company. Later, a superior confirmed Pasciuto's story. But at the trial, a horrified Pasciuto listened while his superior changed his testimony. Close to tears, he, too, recanted.

Judge Bason believed Pasciuto's original testimony, however. On Feb. 2, 1988, he ordered Justice to pay INSLAW about $6.8 million in licensing fees and roughly another $1 million in legal fees. Bason wasn't sure whether he could assess a department of the U.S. government with punitive damages. If so, damages could run as

high as $25 million. Bason struggled with that legal question and finally postponed the decision to a later date.

Now, no one knows how Judge Bason would have ruled on the question of damages. In November, Judge Bason rejected a Department of Justice motion to liquidate INSLAW. A scant one month later, the Harvard Law School graduate and former law professor discovered that he was not being reappointed. The decision to replace him followed from a recommendation made by a four-man merit selection panel appointed by the chief circuit judge, Patricia Wald, a former Justice Department employee. The panel was headed up by District Judge Norma Johnson, another former Justice Department lawyer.

Judge Bason stepped down in February. He was replaced by S. Martin Teel Jr., 42, one of the Justice Department lawyers who had unsuccessfully argued the INSLAW case before Bason. Even jaded, case-hardened Washington attorneys called the action "shocking" and "eerie."

INSLAW's case will be assigned to another judge for disposition of damages. Meanwhile, the Justice Department is appealing Judge Bason's initial $8 million award to U.S. District Court. And, last week, the Internal Revenue Service descended on the Hamiltons, demanding that the bankrupt company pay $600,000 in back taxes—immediately.

"I restrained the IRS from going after the Hamiltons personally—just a few days before I left the bench," Bason recalls. "But that restraining order lasts only 10 days. I don't know what's happening now."

"It seemed as if the controversy was winding down," observes INSLAW's former attorney, Leigh Ratiner. "It would follow a natural course in the press, and then fade from view." INSLAW would become another shocking event that slinks off into obscurity: Someone occasionally might dimly remember and idly ask, "What ever did happen to Bill Hamilton and those INSLAW people? A real shame . . . I heard the judge was back teaching law somewhere. . . ."

But at the end of last week Anthony Pasciuto instructed his lawyer to write a letter to Deputy Attorney General Arnold Burns. Pasciuto has decided to tell the full story that he began telling at the Mayflower last spring. And, in an interview with *Barron's* at the end of the week, Pasciuto explained how the Justice Department blackmailed INSLAW. It was a tale that involved two U.S. trustees, a federal judge who told two versions of the same story, and a Justice Department that routinely refused to pay certain suppliers: "If you're on the bad list, you go in this drawer," another Justice Department employee explained to Pasciuto.

Pasciuto knows what happened—but not why. In the trial, INSLAW claimed that C. Madison "Brick" Brewer, the Justice Department employee responsible for administering the department's $10 million contract with INSLAW, held a grudge against the company: INSLAW's Hamilton had fired Brewer in 1976. But since the trial, Hamilton has become convinced that Brewer alone could not have been that powerful. Bason's removal and Pasciuto's account suggest that what motivated the remarkable behavior of the Justice Department was something of greater moment than a middle-level employee's petty grievance.

Indeed, three people have lost their jobs as a result of the INSLAW scandal—but not, paradoxically, those responsible for the scandals. The trio of victims includes Judge Bason and Pasciuto—who received notice that he would be fired after he testified, and just two days after Judge Bason was informed that he would not be reappointed. The third casualty of the Inslaw affair was Leigh Ratiner, a former partner at Dickstein, Shapiro and Morin, the firm that represented Edwin Meese during his confirmation hearings for Attorney General.

Why Bason and Pasciuto got the axe can easily be inferred. Ratiner's forced departure is a little more complicated. In January 1986, Elliot Richardson asked Ratiner to take on INSLAW's defense. Ratiner agreed, and named D. Lowell Jensen, then the Deputy Attorney General, and a long-time Meese friend, in a complaint. Not long after, Meese discussed the case with another Dickstein, Shapiro partner, Leonard Garment, the attorney who, along with E. Robert Wallach, represented Meese in his confirmation hearings. Meese acknowledged the conversation in a pretrial interrogation. Shortly thereafter, his partners at Dickstein, Shapiro asked Ratiner to resign.

The Senate's Permanent Subcommittee on Investigations is now looking into INSLAW—a sign that the lawmakers, too, think that the whole story of the "something strange" that happened in the Justice Department has yet to be told. The Hamiltons' attorneys aren't sure why a department of the U.S. government wanted to liquidate their company. Anthony Pasciuto doesn't know. Judge Bason is still trying to piece together who had it in for him and why. But Bason, Hamilton and

the attorneys involved in the case are beginning to define the pieces of the puzzle with some pointed questions.

Why did the Justice Department hire Brick Brewer, a former INSLAW employee, to supervise a contract with his former employer? "The person is going to be biased in favor of the former employer—or he is going to be biased against the former employer," Bason pointed out in his decision.

The judge also noted that D. Lowell Jensen, the former deputy Attorney General named by Ratiner in his complaint, was questioned on this issue. Jensen, now a federal judge in California, "recognized the general principle that it is a bad idea" to hire a former employee, disgruntled or otherwise, for such a task, Bason observes. But, Bason wrote, he was amazed to find "no hint in Jensen's testimony that he recognized there was any possible applicability of that general principle to the case of Mr. Brewer and Inslaw."

Hamilton discloses that Mr. Jensen himself was already familiar with INSLAW. Hamilton ran into Jensen in the early 1970s, when Hamilton was developing PROMIS, the case-tracking system that he contracted to sell to the Justice Department. At that time, Jensen, a long-time friend of Ed Meese, was district attorney in Alameda County in northern California, developing his own computerized case-tracking system, DALITE. Jensen competed with Hamilton's PROMIS head-on-head. PROMIS won.

Hamilton and others familiar with the case ask: Could Jensen still be feeling competitive? People who have "tracked" the ISLAW case point to the coincidences of timing: INSLAW'S problems with the Justice Department erupted soon after Jensen was promoted to Associate Attorney General—the No. 3 person in the department—in 1983.

Hamilton reveals another curious coincidence: About 90 days before the Justice Department contract began to fall apart, he received a phone call from Dominic Laiti, chairman of Hadron Inc., a company in which Earl Brian, a long-time Meese colleague, holds an interest (*Barron's* Jan. 11). Brian's Infotechnology controls four of six seats on Hadron's board. Laiti told Hamilton, according to Hamilton, that Hadron intended to become the dominant supplier of computer software and services to law enforcers and courts and related agencies, and that Hadron wanted to buy INSLAW. "We have ways of making you sell," Hamilton quotes Laiti as saying.

Laiti insists: "I have no memory of this. It all sounds ridiculous to me."

The bizarre web of coincidences and connections includes AT&T. AT&T had a contract with INSLAW and, during bankruptcy proceedings, declared itself a major creditor. Then Hamilton alleges, AT&T's attorney began to behave less like someone representing a creditor interested in salvaging the company than like an attorney for the Justice Department bent on liquidating it. More coincidences: AT&T's outside counsel, Ken Rosen, was with an obscure New Jersey firm, but formerly had been a member of Deputy Attorney General Burns's New York law firm. Rosen's co-counsel, Shea & Gould, is not AT&T's usual outside counsel, either, though it is the firm used by Earl Brian.

Bason questions the failure of high Justice Department officials to take any action to investigate serious allegations of misconduct. Both Hamilton and his attoreny, Elliot Richardson, complained about Brewer's handling of the contract, and requested an investigation.

"There's such a contrast between the total inaction on the part of Justice Department regarding Mr. Brewer—and the hammer and tongs approach they're using with Mr. Pasciuto," Bason observes.

Last Thursday, Pasciuto's attorney, Gary Simpson, delivered his letter to Deputy Attorney General Burns—and met with the Senate committee. At the end of the week, that committee met with Bason, as well. Senator Nunn's committee may find some answers—and ask more questions—that will illuminate this bizarre story.

For now, Pasciuto does know what happened to him, and his tale provides a window on the strange thing that happened to INSLAW.

In March of 1982, William Hamilton could probably envision his face on the cover of Fortune. He had just won the $10 million, three-year contract with the Justice Department to install PROMIS in the department's 20 largest U.S. Attorney's offices, and to develop a separate program for its 74 smaller offices. Hamilton, who had contracts with private firms as well, now had a deal with the nation's premier law firm: the Department of Justice.

PROMIS was unique, and those 94 U.S. Attorney's offices represented an entering wedge: Hamilton could dream of capturing the federal judicial system's entire caseload. In the fiscal year October 1, 1982, INSLAW's revenues went up about 35% to $7.8 million, with more than half of those revenues coming from the Justice Department contract.

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But then, that funny thing happened. The Justice Department began postponing payments. In July 1983, Hamilton says, the department suspended nearly $250,000 in payments, alleging that the company was overcharging the government for time-sharing. In February 1985, the government terminated the contract with smaller offices that had been generating revenues of $200,000-$300,000 a month.

INSLAW's cash flow shriveled. By Feb. 7, 1985, the government had withheld $1.77 million. Inslaw twisted and turned, trying to negotiate with the Justice Department, desperate to find out what went wrong. Finally, in financial shambles, INSLAW filed for bankruptcy in late February. The Department of Justice kept the INSLAW software—and kept on using it.

In his decision, Bason compares the Justice Department to someone who decides to test drive an automobile: "So the customer drives off with the car and this is the last the dealer ever sees of him. I think that is approximately what the Department of Justice has done in this case."

In last week's letter to Deputy Attorney General Burns from Pasciuto's attorney, Gary Simpson, Pasciuto suggests a pattern of harassment that helped drive INSLAW into Chapter 11. According to Pasciuto, in June of 1984, Robert Hunneycutt, who worked in the Department of Justice's finance offices, told him about his practice of dividing contractor's bills into three piles. "One pile he would pay right away; the next pile when he got around to it; and then he opened a drawer and pointed to some invoices in the drawer and said: 'These invoices may never get paid.' " Honneycutt then identified such invoices as belonging to companies on the "bad list."

"Mr. Pasciuto asked who was in that pile," the letter to Burns goes on, "and he said that INSLAW was an example and that 'People in the U.S. Attorney's offices don't like INSLAW, they are in this pile. . . .' "

When Barron's phoned Hunneycutt, he returned the call, and left this message: "Mr. Hunneycutt knows nothing." In a subsequent conversation, he denied the conversation with Pasciuto.

But Hamilton claims that the Justice Department was trying to starve INSLAW. They didn't just push to bankrupt the software firm, he insists, they wanted to liquidate it, converting it from Chapter 11 to Chapter 7, as soon as possible. Why? Hamilton speculates that Justice may have wanted to push INSLAW into an auction where PROMIS could be purchased cheaply by someone that the department viewed more favorably.

Indeed, the Justice Department did move for liquidation. And on St. Patrick's Day 1987, Anthony Pasciuto met with the Hamiltons at the Mayflower and gave them a fuller picture of what was happening to them. A mutual friend, Mark Cunniff, executive director of the National Association of Criminal Justice Planners, asked Pasciuto to go to that breakfast meeting at the Mayflower.

"I said, 'Don't you know what you're asking me to do?'" Pasciuto recalls. "He said, 'I know.' "

"I knew him for 19 years," Pasciuto explains. "I said, 'Mark, I'm doing it for you—and for these poor people.' I knew they had five kids," adds Pasciuto, a graying 44-year-old All-American "nice-guy" with a strong Boston accent, and an open, slightly pockmarked face. Pasciuto has been married for 21 years, in government service for 21 years, and still wears his class ring—U. of Mass., 1965.

So, at the Mayflower, Tony Pasciuto remembers he tried to help Bill and Nancy Hamilton—and confirmed their most paranoid fantasies: The Justice Department was out to get them.

At the meeting with the Hamiltons Pasciuto told them that his boss, Thomas Stanton, director of the Justice Department's Executive Office for U.S. Trustees, was pressuring the federal trustee overseeing the INSLAW case. William White was being pressed to liquidate INSLAW. According to Pasciuto, in 1985 White told him that he was resisting the pressure. As a result, White informed Pasciuto, Stanton denied White's Alexandria office administrative and budgetary support and, at the same time, tried to have an assistant from the U.S. Trustee's office in New York take over the case and covert it.

The Hamiltons were told by Pasciuto that Cornelius Blackshear, the U.S. trustee in New York at the time of INSLAW's Chapter 11 filing, knew all about Stanton's plan. Pasciuto said that Judge Blackshear had repeated this tale of pressure in the presence of United States Court of Appeals Judge Lawrence Pierce in the judge's chambers in Foley Square in New York. Pasciuto also told the Hamiltons that the Justice Department had blacklisted INSLAW on the department's computer system procurements.

On March 25, 1985, INSLAW's lawyers deposed Blackshear, and he confirmed the story of pressure to liquidate INSLAW. The very next day, March 26, Blackshear

met with a Justice Department representative, and signed a sworn affidavit, recanting, and saying that he had confused INSLAW with another case—United Press International, which had also been involved in bankruptcy proceedings in Judge Bason's court.

"I know the difference between UPI and INSLAW, I'm not that dumb," Pasciuto observes. He spells it out with a finger: "U—P—I."

Cornelius Blackshear left his position as United States Trustee and became a United States bankruptcy judge the following fall.

According to Pasciuto, Judge Blackshear discussed INSLAW in Judge Pierce's chambers. But when questioned on the point, Judge Pierce told *Barron's:* "I have made it my business not to get into the particulars of whatever Tony [Anthony Pasciuto] got himself into the middle of. Apparently, he thought his employer was doing something that was not kosher. I told him I didn't want to know about it—if he needed to, he should hire an attorney."

When *Barron's* offered to recount the details Pasciuto allegedly discussed in his presence, the judge grew agitated: "Don't tell me—I don't want to hear it. I don't want to know about it."

"I did ask him for help—six months before it all happened. I didn't know what to do," Pasciuto recalls. "Judge Pierce and I go back to the time when I was an assistant dean at the School of Criminal Justice in Albany—in 1972. He was a visiting faculty member for one year. We became good friends. I considered him a father figure."

In his ruling, Judge Bason noted that Blackshear had given "two different versions of the same event" and decided that other evidence supported the first version. White also denied the story of political pressure in court and Judge Bason asserted in his June 1987 ruling, "What I do believe is that Mr. White has a capacity to forget . . . a capacity which probably all humans share to some degree or another."

Judge Bason went on to point out: "Mr. White has just recently joined a large law firm that practices primarily in Virginia and primarily in bankruptcy matters. Mr. White's future with the firm that he so recently joined could well be dependent on income-producting work that he does. . . . It seems to this court that Mr. White is not in a position at this point in his career to jeopardize his relationship with the U.S. Trustee's office in Alexandria, and for him to testify in a way that would be strongly disliked and disfavored by the Executive Office for U.S. Trustees could well have an adverse impact on the relationship between the executive office and the Alexandria office and, in turn, a relationship between Mr. White and the Alexandria office."

But in late spring of 1986, White was still a U.S. Trustee, and Pasciuto recalls one more incident involving INSLAW, White called Pasciuto and asked for an extra filing cabinet for his INSLAW files. "I said, 'You've got plenty of them over there,' " Pasciuto recalls. White responded, "I know, but I need another one because I need to put all the INSLAW files in one cabinet and lock it."

White was discreet. So, on June 1, 1987, when Anthony Pasciuto walked into that packed D.C. courtroom to take the stand in the INSLAW case, he knew that White would not support his story. He also knew that Judge Blackshear had changed his original story. As Pasciuto's lawyer puts it in the letter to Burns: "Mr. Pasciuto was now the only person with recollection of conversations with U.S. Trustees in which Mr. Stanton was identified as having put pressure regarding the INSLAW case. Other people's recollections were being erased by mechanisms best known to them."

Pasciuto's boss, Stanton, apparently put his own pressure on Pascuito. Beginning in 1985, according to the letter to Burns, Pasciuto began reporting his concerns about substantial deficits in the U.S. Trustee's office to Stanton. In 1986, Pasciuto spoke to the Department of Justice's finance staff and by late 1986, he says he had gone on record with the Office of Professional Responsibility about financial indiscretions by Stanton. According to Pasciuto, Stanton in September 1986 called him a "traitor." Pasciuto began actively looking for other employment, including a job as Assistant U.S. Trustee in Albany, N.Y. But no transfers were available for Anthony Pasciuto—until he was subpoenaed to testify in the INSLAW case.

"Within an hour of receiving that subpeona to testify, Mr. Pasciuto was given a copy of an appointment paper for a job as the Assistant United States Trustee, Albany, New York, signed by Mr. Stanton," Simpson, Pasciuto's attorney, reports in last week's letter to Burns. After the trial was over, however, Pasciuto was told that the procedure "was changed" and that the deputy Attorney General would have to sign off on the form. That never happened.

But Pasciuto, who believed the signed appointment papers, sold his house in Maryland for $200,000 and bought a house in Albany for $250,000. On the day the

movers came, he was told that the sale of the Maryland house had fallen through. "We had to move, we had to carry two houses—and we couldn't even move into the Albany house yet because the owners wouldn't be moving out for a month," Tony Pasciuto recalls. "So, we stayed with in-laws for a month." That was May 22, 1987. Nine days later, Tony Pasciuto walked into court.

When he entered the courtroom on June 1, 1987, Pasciuto was not represented by counsel. According to Simpson, his attorney: "The Justice Department attorney who was handling the INSLAW case, Mr. Dean Cooper, did not prepare him well for his trial testimony. The paralegal who was taking notes during the witness preparation says that he has lost the notes of that meeting."

When the questioning began, Pasciuto must have realized that the Justice Department attorney was not going to guide him gently through his story. One of Cooper's first questions was "whether [Pasciuto] had been seeing a doctor about a stressful condition."

In his letter to Burns, Simpson explains: "Mr. Cooper apparently knew that Mr. Pasciuto had been seeing a psychiatrist in connection with personal problems that he had been experiencing and Mr. Pasciuto . . . now knew that the United States Department of Justice was prepared to stoop to the level of bringing his personal problems into the INSLAW case to get him to be careful about what he said."

Apparently, the tactics worked. Pasciuto recanted, saying that the statements he made to the Hamiltons at the Mayflower were made in an effort to hurt Stanton, who was blocking his promotion.

Judge Bason remembers the scene: "Mr. Pasciuto seemed to be basically a very honest person who had been caught up amongst a gang of very tough people—and he just didn't know what to do. He was a career federal employee and he was petrified. He probably had a vision of losing his job, his marriage, everything. Probably he thought the only way he could save anything was to recant. I had to adjourn at one point during his testimony—he was close to tears."

But Pasciuto didn't save his career. And now, in the letter to Burns, he has come forward to make a full disclosure.

Last week's letter to Burns contains a compelling, painful vignette of a chance meeting between Pasciuto and Blackshear, about a month after the trial, on July 11, 1987. If Hamilton felt floored by Pasciuto's testimony, so Pasciuto must have felt betrayed by Blackshear's change of heart. The meeting was awkward.

As Simpson tells the story in the letter to Arnold Burns, it was six in the evening, when Pasciuto and his wife were leaving the home of a mutual friend, Harry Jones, now U.S. Trustee for the Southern District of New York. Judge Blackshear came up to Tony Pasciuto, put his arm around him, and said, "I am sorry, it will be all right."

Pasciuto replied: "No, it is not going to be all right, they are going to fire me."

Blackshear responded, "They are not going to fire you. Don't they know how much you know?"

Pasciuto: "Yes, but they don't care."

Blackshear: "But you told the truth."

Pasciuto: "Of what importance is the truth if everyone else is lying?"

Blackshear: "These people came up from Washington and the U.S. Attorney's office; I got confused. I thought that by changing my story I would hurt less people. I didn't know you were subpoenaed until I saw your testimony, which was sent to me by Barbara O'Connor."

Pasciuto: "Do you remember what we talked with Judge Pierce about?"

"I wanted to see if he was going to continue his crap," Pasciuto recalls. "But he dodged—literally backing away from me—saying, again, 'They sent someone from Washington and someone from the U.S. Attorney's office. I felt the easiest thing to do was recant. I felt less people would be hurt if I just bailed out.' "

In Simpson's version, Judge Blackshear had received two telephone calls from William White the day he changed his story. White told him he had the wrong case.

Pasciuto, exclaimed, sarcastically: "What! They asked you about converting *another* case [from Chapter 11 to Chapter 7]?"

Blackshear, waving his hand: "I don't want to get into it and who the hell cares?"

Today, after listening to Simpson's version, Blackshear states: "I don't remember the specifics, word for word, but I do remember having that conversation. And I don't have any problems with what Tony remembers."

Recalling the scene, Pasciuto says: "You know, even now—I'm not angry. I can't help it. I'm not. Blackshear is basically a wonderful person. It's sad—I'm sorry, I'm not angry. It really is sad. I feel devastated."

Tony Pasciuto now has a house in Albany, and soon will have no job either in Washington or New York. Over the past nine months, he has spent $12,000 commut-

ing from Albany to the job he still clung to in D.C. Legal fees are draining his savings—the bills total $25,000 so far. "We're lucky that my wife and I were always frugal and have the money saved," he says proudly.

But Tony Pasciuto is frightened. "At work, ever since I got the letter saying they were firing me, I've felt like I was under house arrest," he relates. "People come by my office to see if I'm there. If I leave, I have to sign out. Everyone is supposed to, but normally very few people sign out. If I don't, they try to track me down. If I go to the Men's Room, they come looking for me.

"I'm just a GS 15," adds Pasciuto, referring to his level in government service. "Stanton, my boss, can't fire me. Stanton made the accusations, but the deputy Attorney General, Arnold Burns, will fire me. How does it feel to know that the deputy Attorney General of the United States wants to destroy a GS 15? It's scary. It scares me to death."

[From Barron's, Apr. 4, 1988]

Rogue Justice—What Really Sparked the Vendetta Against INSLAW

(By Maggie Mahar)

Two weeks ago, *Barron's* told the story of INSLAW, a small software company that landed a $10 million contract with the Justice Department in 1982. Bill Hamilton, INSLAW'S 42-year-old founder, was jubilant when Justice bought the Prosecutor's Management Information System (PROMIS), which he had spent his life—and his life's savings—building. But then things took a mysterious and nasty turn. Justice began withholding payments. Contract disputes multiplied. Threats accelerated. Bill Hamilton couldn't understand what was happening or why. But he knew INSLAW's cash flow was shriveling. By 1985, INSLAW was in financial shambles, and Bill Hamilton ended up in federal bankruptcy court. And there, last fall, a federal bankruptcy judge handed down an astonishing ruling.

Judge George Bason found that the Justice Department had purposefully propelled INSLAW into bankruptcy in an effort to steal its PROMIS software through "trickery, deceit and fraud." On Feb. 2, 1988, Bason ordered the Department of Justice to pay INSLAW about $6.8 million in licensing fees and roughly $1 million in legal costs. He postponed a decision on punitive damages—which could run as high as $25 million.

Trial testimony revealed an unexplained series of "coincidences" surrounding the INSLAW case, including the fact that Justice appointed C. Madison "Brick" Brewer to oversee the INSLAW contract. Brick Brewer had worked for Hamilton—until Hamilton fired him in May 1976. After listening to Brewer's testimony, Judge Bason wrote that he could not understand why Justice picked a man "consumed by hatred" to administer the contract with a former employer. He also couldn't fathom why top department officials ignored complaints from INSLAW attorneys when Brewer began withholding payments. "A very strange thing happened at the Department of Justice . . . ," observed Judge Bason, leaving open the question as to just why, at the highest levels, the U.S. Department of Justice condoned a vendetta against a small, private U.S. company.

It was November of 1987 when Judge Bason rejected a Justice Department motion to liquidate INSLAW. Not quite one month later, Judge Bason learned that he would not be reappointed to the bench. In the past four years, only four of 136 federal bankruptcy judges seeking reappointment have been turned down. Bason was replaced by S. Martin Teel, one of the Justice Department attorneys who unsuccessfully argued the INSLAW case before him.

Bason observes that the Justice Department will now have a "third bite of the apple" on the question of punitive damages. Judge Teel has recused himself from the case, and the Justice Department is appealing. So INSLAW vs. the United States of America hangs in limbo.

The INSLAW case also left a Justice Department whistleblower waiting for the verdict on his 21-year career. When *Barron's* began reporting the INSLAW story two weeks ago, we interviewed Tony Pasciuto. Pasciuto revealed how a Justice Department colleague responsible for paying contractors bills said he divided them into three piles: "One pile he would pay right away, the next pile when he got around to it, and then he opened a drawer and pointed to some invoices in the drawer and said, 'These invoices may never get paid. If you're on the bad list you go in this drawer.' " INSLAW was on the bad list.

Pasciuto also repeated what he had been told by Cornelius Blackshear, a federal judge and former U.S. Trustee based in New York. Blackshear had confided that his Justice Department superior in Washington was pressuring him to send someone down to D.C. to help liquidate INSLAW. Apparently, Washington wanted to make sure that the job was done.

When INSLAW's lawyers deposed Blackshear, he confirmed the story. During INSLAW's suit, Judge Blackshear recanted. Meanwhile, about one hour after Pasciuto was subpoenaed to testify, his superiors in the Justice Department offered him a long-awaited transfer to Albany, N.Y.

Feeling scared and "out there all alone," Tony Pasciuto bought a house in Albany and changed his story. Close to tears, he recanted on the stand. Judge Bason recalls the scene: "Mr. Pasciuto seemed to be basically a very honest person who had been caught up amongst a gang of very tough people—and he just didn't know what to do."

According to Pasciuto, after he testified, Judge Blackshear met him at a party and said, "I'm sorry. . . . These people came up from Washington and the U.S. Attorney's office. I got confused. I thought that by changing my story I would hurt less people." When *Barron's* read Pasciuto's version of the conversation to Judge Blackshear, a weary-sounding Blackshear confirmed it: "I don't remember the specifies word for word. But I do remember the conversation. And I don't have any problems with what Tony remembers."

Meanwhile, after Tony Pasciuto recanted in court, the Justice Department told him, "Sorry, the procedure was changed. No transfer to Albany." Then, B. Boykin Rose, one of the Justice Department officials who resigned last week, wrote a letter to Deputy Attorney General Arnold Burns—another member of the Justice group who bailed out—recommending that Pasciuto be fired.

When *Barron's* last talked to Pasciuto, he was commuting from the new house in Albany to a job in Washington, where, he said, "I feel like I'm under house arrest." And he was awaiting the end of his 21-year career in government service.

"My boss, Thomas Stanton, can't fire me," Pasciuto explained. "The Deputy Attorney General, Arnold Burns, will fire me. How does it feel to know that the Deputy Attorney General of the United States wants to destroy a GS15? It's scary. It scares me to death." Last week, Burns led the dissidents out of the department.

Tony Pasciuto's tale is chilling. And it raises two equally disquieting questions: Why did the U.S. Department of Justice want to liquidate Bill Hamilton's software company? And, how high did the coverup of the scheme to destroy INSLAW go?

When six Department of Justice officials resigned last week, department spokesmen insisted that they were NOT leaving because they feared Attorney General Edwin Meese was about to be indicted. Nor had they beaten their wives—should anyone ask. But, according to *Barron's* sources inside Justice, their exodus represents the climax to a much larger, subterranean game of musical chairs that has been going on in the Department of Justice for the past 18 months.

"I know of at least 50 or 60 career government employees who have been reassigned or forced out," says one department insider. Another charges the departments with using FBI background checks in order to manufacture reasons for forcing employees to leave. "They're trying to find-or force-openings for political appointees that they want to bury as what we call 'moles' in the department," explains a longtime Justice Department hand. "They bury the moles so that the next administration can't find them."

The moles, he goes on, are political appointees who are moved into GS (government service) jobs normally held by career government employees. "It could take the next administration two years to figure out who are the career employees and who are the political appointees dropped into their slots," he says. "In the meantime, the moles will be in place—and they'll have the historical knowledge of how the organization works—everyone else will be gone."

But even while the moles are burrowing in, the rumor among them is that sunlight is about to flood the shadowy reaches of the department. For last week's resignations suggest that Special Prosecutor James C. McKay is coming closer to addressing the question: "Was there justice at Justice during the past four years?"

The INSLAW affair suggests a disquieting answer, for the virtually unpublished case serves as a window on how Justice did business during the Meese years. In his blistering ruling Judge Bason charged that the department committed a series of "willful, wanton and deceitful acts . . . demonstrating contempt for both the law and any principle of fair dealing."

Originally, Bill Hamilton, INSLAW's founder, thought that only one mid-level Justice Department official was willfully and deceitfully out to get him: C. Madison "Brick" Brewer, the former employee whom he had fired. When Hamilton and his

wife, Nancy, put their six children in the family station wagon and drove to a federal court on June 9, 1986, to file a suit against the United States government, they firmly believed that Brewer was their nemesis. But as the trial progressed, their certainty gave way to doubts. Why did Justice put Brewer in that critical and, under the circumstances, highly improper position—and allow him to remain? Why did the Justice Department refuse to settle? Why were the government's lawyers, seemingly not satisfied with bankrupting INSLAW, pressing so hard to liquidate the company? When the trial was finally over at the end of 1987, Bill and Nancy Hamilton had won their case, but they still wanted to know why their company was near ruin. So they followed the counsel of Elliott Richardson, one of their attorneys: They sat down at their dining room table, made a list of all the anomalies in the baffling case, and tried to puzzle out the mystery.

"These were all things we were aware of, yet until you organize them and put them side by side, you don't see them," Hamilton observes.

"But seeing the strange incidents and coincidences all together, suddenly it popped out at me. There was a coverup—and it wasn't just to protect Brick Brewer. For instance, someone had persuaded Judge Blackshear to recant under oath within 48 hours of his original deposition. Who would have that power? You don't do that to a federal judge to protect Brick Brewer—it's too risky. That's when I became convinced then that there was criminal liability at the highest levels of the department. Then, I started to look at the pieces. And, every time I picked up a rock and turned it over, it seemed to fit."

Now, looking back five years. Bill Hamilton believes he understands the reasons for the oppressive behavior of the Justice Department. And he thinks he had an early warning about the department's methods. But he didn't take the warning phone call seriously.

As Bill Hamilton tells it, it was April of 1983, and he was sitting in his office—right across the street from the Washington Post—when he received the call from Dominic Laiti, chairman of Hadron Inc.

"Laiti identified himself, and said that Hadron intended to become the leading vendor providing software for law enforcement nationwide," Hamilton recalls. "He said they had purchased Simcon, a manufacturer of police-department software—and Acumenics a company that provides computer-based litigation support services for courts. 'Now,' Laiti told me, 'we want to buy INSLAW.' "

"I told him he had just described our ambition," Hamilton relates. "We intended to become the major vendor of these software services ourselves—and we were not interested in being acquired."

But Laiti kept pushing, and, according to Hamilton, boasted, as he remembers. "We have very good political contacts in the current administration—we can get this kind of business."

The words would reverberate in Hamilton's memory later, but, at the time, he didn't heed the implicit threat. He just repeated, "We're not interested in selling," whereupon, he says. Laiti reported, "We have ways of making you sell."

The story sounds fantastic. Laiti calls it "ludicrous." Is Hamilton making it up? "I would think the whole tale was fantasy—if I hadn't been involved in investigating the Iran-Contra affair," confides a Senate staffer now involved in an investigation of the Justice Department's software contracts. And Judge Bason states that Hamilton was a levelheaded witness with a scrupulously honest memory:

"I was particularly impressed in the last phase of the trial," Bason recalls. "Hamilton could very easily have testified positively in a way that would have been favorable to his case—to an extent of about $1 million. Instead, he testified. 'This is my best recollection—but I am not sure.' The contrast between that and the government witness who was so obviously disingenuous!"

The call from Hadron was strange, so Hamilton remembered it, but in 1983, he shrugged it off. "I politely, but firmly, cut off the conversation. I'd never had a conversation like that with someone in the software industry. I thought Hadron must be new to software—maybe they were used to an industry where this kind of talk was more prevalent."

But now, Hamilton surmises that his troubles may have begun with that phone call. Within 90 days of Laiti's threat, he says, the Department of Justice mounted its attack. And, Hamilton alleges, the attack ultimately became a vendetta, a vendetta that could have been inspired by the convergence of three interests:

Hadron, the brazenly aggressive competitor controlled, from behind the scenes, by a Meese crony from his salad days in California: Dr. Earl Brian.

Brick Brewer, the embittered former employee who, as project manager, was in a strategic position to do INSLAW harm.

D. Lowell Jensen, then the deputy Attorney General, and a ghost from INSLAW's own California past. Jensen had developed a software product to compete with INSLAW and lost—back in the 1970s when Jensen was a D.A. in Alameda County. But Jensen did have the good fortune to meet Ed Meese in that D.A.'s office. So years later, Jensen became top-ranking member of the "Alameda County Mafia," which found a home in the Ed Meese Justice Department.

When Bill Hamilton sat down, in good faith, to negotiate a deal with the Justice Department, the people on the other side of the table were not dispassionate government officials. They were instead a hostile crew, inspired apparently by old scores and private interest. Whether carefully organized or spontaneously launched, the attack was successful—for a while, anyway. When the principals and the department were suddenly in danger of exposure, Hamilton charges, the cover-up spread out to embrace the Justice Department bureaucracy, the IRS, and Jensen's successor—former Deputy Attorney General Arnold Burns—one of the six who quit last week.

"They circled their wagons," Judge Bason wrote. The defense became an offense, and an attorney, a Justice Department whistle-blower, and the judge himself all lost their jobs. Today, only two of the three have found work.

Hamilton is luckier. IBM has become INSLAW's savior—rescuing the company from the auction block, and vindicating the worth of its product. Meanwhile, some Senate staffers looking into the INSLAW case believe that it raises questions about Project Eagle, a much larger scheme to computerize the Justice Department; the $200 million contract is scheduled to be awarded before the end of the year.

The deeply troubling questions about INSLAW remain. If anything, they are magnified by last week's departures from Justice: "Why?" and, "How High?"

"Start," Bill Hampton says, "with Hadron." For Hadron is, indeed, as Laiti allegedly boasted, "well-conducted in the Administration." It is controlled by Dr. Earl Brian, the longtime friend of Ed Meese who owns Financial News Network (Barron's Feb. 29). In fact, business dealings between the Meese family and Brian's company imperiled Meese's 1984 nomination. And Hadron, Hamilton charges, in one of the keys to the mystery of why INSLAW became the victim of rogue justice.

Hadron boasts a history replete with acquisitions, lots of government business—and brushes with the SEC.

The outfit emerged in 1979 from the ashes of Xonics, a notorious high-tech fiasco founded and headed by a colorful wheeler-dealer named Bernard Katz. *Barron's* described Xonics in 1976 as s company with a knack for "recognizing income as fast as possible and deferring expense as it decently could."

In 1977, the SEC brought a lawsuit against Xonics, accusing top management, including Katz of fraud and manipulating the stock's price, in part by using Xonics stock to acquire other firms. Besieged by two shareholder suits, Xonics agreed to a permanent injunction in April of that year. The company did not admit to any wrongdoing.

But the nimble survived. In 1979, Dominic Laiti gathered a group of former Xonics executives, and bought Hadron. By 1983, the company was lauded in the press as "an investment banker's dream."

For the child had, it appeared, inherited the parent's acquisitive streak, snapping up nine companies in just three years. The offspring did run into a few SEC snags of its own, however. In 1981, the SEC ruled that the limited partnerships Hadron had set up to fund its R&D efforts were in truth a form of loan financing rather than a source of revenue. By 1982, Hadron had lost $4.5 million and another shareholder suit was pending.

But by 1983, Dominic Laiti's group appeared to be on a roll, acquiring their way into an exciting new industry: lasers. Laiti was quoted as saying. "There's the potential for very, very rapid growth."

Unfortunately, the roll turned out to be a very, very rapid roller-coaster. By February of 1984, Hadron was announcing sale of its "money-losing laser-equipment division." In the third quarter a year earlier, Hadron had earned a penny-a-share profit, but by early 1984, it was sinking $1.2 million into the red. Hadron's ups and downs continued: a loss of $231,000 for the 1986 fiscal year, a profit of $852,000 a year later—despite a 13% decline in revenues.

Since 1979, the price of Hadron's stock has followed the same pattern, swinging wildly from its high of 6⅛ in December of 1980 to a low of ¾ in March of 1985. In the past couple of years, the stock has been trading in a narrower range between ¾ and 1 1/16, and an investor complains that as far as he knows, the company hasn't had a shareholders' meeting since 1983. "I'm not so much perturbed that they don't meet—I wouldn't care if they never met, if the the stock were up around $5 or $6," this sizable holder laments.

Still, Hadron has kept bouncing back—with a little help from Uncle Sam: namely, contracts with the Pentagon, a fat settlement with the Agency for International Development and, most recently, a gigantic contract with, yes, the U.S. Department of Justice.

Hadron's government connection can be traced to Earl Brian, who was president of Xonics, Hadron's parent, until October of 1977. Brian slipped away from the company discreetly, just six months after Xonics rolled over and agreed to the SEC injunction. Brian was never charged with any wrongdoing; four Xonics officers were required to sign the consent decree, and he was not one of them.

Ostensibly, Dominic Laiti led the investor group that then rescued Hadron from the ruins of Xonics, but somehow Brian managed to keep his hand on the levers. Today, Laiti—the man who allegedly phoned Bill Hamilton—is Hadron's chairman, but Brian's business-development company controls four of the six seats on Hadron's board.

In March of 1981, Brian resigned from Hadron's board in order, he said at the time, "to divest himself of Hadron to facilitate future transactions" between his business-development company, Infotechnology, and Hadron "under the Investment Company Act of 1940." But by January 1984, Brian was back on Hadron's board, and, according to the 1987 annual report, he's still there, though Hadron is continuing to do deals with Infotech. In October 1987, Hadron sold Atlantic Contract Services to Infotech at book value for a combination of cash and Infotech common stock in a deal valued at roughly $300,000.

"Brian does an awful lot of buying and selling," the disgruntled Hadron shareholder observes. "He's making money at it, but I'm not sure his shareholders are making money. I know that, as a shareholder of Hadron, I'm not making any money."

Still, in the spring of 1987, Hadron moved into the black, in large part because it received $1.6 million from the Agency for International Development. The AID settlement came after the U.S. government cancelled a Hadron subsidiary's business with Syria.

But the AID money wasn't the only lucky boon from Uncle Sam. The government has long been a Hadron client: In the 1987 fiscal year, approximately 34% of the company's revenues came from the Department of Defense. And most recently, a Hadron subsidiary, Acumenics, locked up a $40 million contract with the Department of Justice.

Hadron never did acquire INSLAW. But there's more than one way to skin a Justice Department software contract. Last October, Hadron's Acumenics division signed the $40 million deal to provide automated litigation-support services for Justice's Land and Natural Resources division.

When the Acumenics contract was awarded, competitors groused that the bidding process was unfair, Justice officials respond that all bids went through a stringent review process.

"There was absolutely no pressure on me. It was one of the cleanest procurements I've been involved in," recalls Steve Denny, the contracts officer on the case.

Justice Department officials also pointed out that the $40 million deal was essentially a continuation of a 1983 contract Acumenics began doing business with the Justice Department in 1970 as an 8(a) minority business. In 1983, Acumenics was acquired by Hadron—and lost its 8(a) status. But even without the favored status, Hadron somehow managed to hold onto the business, and win a four-year competitive bid contract. Shortly after the acquisition, Earl Brian reappeared on the Hadron board, and, recalls a former Hadron executive, told the board, "If we needed any help in marketing at Acumenics, he had been a member of Reagan's Cabinet, he knew people—and would be willing to make phone calls." The Hadron alumnus adds: "He was just being nice." According to Federal Computer Week, a trade publication: "A competitor for the 1983 contract, who declined to be named, said his company no longer bids on Justice Department contracts. He explained that, after losing the 1983 contract to Acumenics, 'We took a look at their bid compared to ours, and it was about $1.5 million over ours.' "

Now, the size of Acumedic's newest deal with the government has raised old questions about the man behind the Hadron subsidiary. Dr. Earl Brian, and his connection to Ed Meese. A venture capitalist, and former neurosurgeon, Dr. Brian practiced medicine in Vietnam, then returned to the States, where he became health and welfare secretary in the then-Gov. Reagan's California cabinet. There, he served with Ed Meese, Reagan's chief of staff until 1979. Today, Brian owns and oversees Infotechnology (which controls Hadron), the Financial News Network, and, most recently, he headed up an investment group that bought the right to run United Press International.

The Brian connection became an embarrassment during Ed Meese's confirmation hearings when Meese acknowledged that his wife, Ursula, borrowed $15,000 from a Meese adviser, Edwin Thomas, in order to buy stock in Brian's company. Coincidentally, just six months later. Brian lent $100,000 to Thomas, who by then needed money himself—and had become a member of the White House staff. Neither Meese nor Thomas listed the loans on their financial disclosure statements. Meese paid no interest, and Thomas only partial interest. Following a six-month investigation, independent counsel concluded that there was no basis for criminal charges against Meese, and while "inferences might be drawn from Mr. Thomas's contact with Dr. Brian . . . whether Mr. Thomas or Dr. Brian committed a violation of law was not within our jurisdiction. Even if we were to make an assumption that Mr. Thomas might have been acting on insider information, we have been given no evidence by the SEC."

Bill Hamilton learned of the connection between Hadron, Brian and Meese only after the INSLAW trial ended. But then, remembering what Hadron's Chairman Dominic Laiti said about being politically connected—not to mention "ways of making you sell"—Hamilton thought he glimpsed an ominous pattern.

Hamilton believes the Justice Department mounted its attack 90 days after the Hadron phone call, "with the apparent objective of forcing INSLAW either to agree to be acquired, or into bankruptcy." Earl Brian, Hamilton is convinced, would have been happy to pick up INSLAW cheaply—at a liquidation sale.

Moreover, Hamilton has reason to believe that the No. 2 man in Justice, D. Lowell Jensen, wasn't at all disposed to save INSLAW from the auction block. For, years earlier, Jensen had competed with INSLAW's product, PROMIS, head-on. While holding public office in Alameda County, Calif., Jensen was promoting a rival software, DALITE, that he hoped would be used statewide. Jensen lost.

Jensen served as Alameda County district attorney in the early 1970s and during that time he tried to persuade other DA offices to adopt DALITE, the case-tracking software system that he helped develop. To that end, Hamilton alleges, Jensen urged the California District Attorneys Association to incorporate. By incorporating, the association would be in a position to apply for grants, receiving and administering funds needed to finance DALITE training statewide. But, Hamilton recalls, the very month that the association finally incorporated, the Los Angeles District Attorney's office, the state's largest, chose INSLAW's PROMIS software—dashing Jensen's hopes for DALITE.

Larry Donoghue, now deputy district attorney for the County of Los Angeles, remembers the keen rivalry. He was in charge of selecting software for the L.A. office at the time, and he recalls visiting Alameda County while making on-site inspections: "Jensen called me into his office and I went away feeling what I regarded to be unusual and significant pressure to select the DALITE system. But PROMIS was a more suitable system for a large office. After I made the recommendation to L.A., I remember my conversation with Joseph Busch, who was district attorney there at the time. I said, 'Joe, what's your reason for hesitating?' He said, 'Larry, there is resistance to my selecting PROMIS.' The resistance couldn't have come from within the L.A. office," Donoghue adds, "no one there knew anything about software. By a process of elimination, it must have come from Alameda County."

When *Barron's* attempted to reach Jensen for a reply, his office stated that, because the INSLAW case is still pending, he could not comment. But during the trial, Jensen conceded that he had been a critic of INSLAW's software. Yet, he insisted, DALITE was not a commercial product available for sale to the public, and he had no financial interest in it.

Jensen didn't own DALITE any more than Bill Hamilton owned PROMIS when he first invented it. Like DALITE, INSLAW's PROMIS began as a government product. Bill Hamilton developed it while working as a consultant for the U.S. District Attorney's office in D.C. in 1970, and improved it while working for a not-for-profit company funded by the Justice Department. PROMIS became commercial software only after Hamilton left this last job in 1981, formed INSLAW, and raised private funds to refine PROMIS. The software then became a proprietary, and highly profitable, product. Presumably Jensen might have had the same luck with DALITE—if PROMIS had not won the California race.

Instead, Jensen remained at his post in Alameda County for 12 years. And from 1959 until 1967, Ed Meese served with Jensen, as an Alameda deputy district attorney.

When Ronald Reagan became President, Ed Meese recommended that his former colleague, Jensen, be appointed assistant Attorney General in charge of the Criminal Division. In 1983, when Rudolph Giuliani resigned as associate Attorney General—the No. 3 spot in the department—Jensen ascended to that post.

So in early 1984, when Edwin Meese became Attorney General, his old Alameda Country compatriot was already in place. And Jensen was not alone. A network, nicknamed the Alameda County Mafia, already was ensconced in Justice. No fewer than six former Alameda County law-enforcement officials held positions ranging from deputy assistant attorney in the tax division, to commissioner of naturalization and immigration. The former Oakland deputy police chief had snagged a spot as director of the National Institute of Justice.

Under Meese, Jensen rose to No. 2, and developed a reputation as a buffer between Ed Meese and his critics. The 58-year-old Democrat was described as "soft-spoken" "apolitical" and a "gentleman of the old standard" in a 1986 New York Times tribute, which added, "Colleagues say that Mr. Jensen, better than anyone else at the Justice Department, knows how to duck."

The Justice Department's diplomat had to duck when congressional investigators looking into the Iran-Contra affair reportedly found a Justice Department memo dated March 20, 1986, saying that Deputy Assistant Attorney General D. Lowell Jensen was giving a "head-up" to the National Security Council, warning that Miami federal prosecutors were on Ollie North's trail.

Bill Hamilton believes Jensen displayed the same talent for diplomatic bobbing and weaving throughout the INSLAW affair. When Hamilton pieced together the anomalies, he realized Jensen's rise to power occurred in the fateful spring of 1983, when he received the call from Hadron, and all of his troubles began.

"Jensen was promoted to associate Attorney General in May or June of '83—and that's when all the contract disputes came up," Hamilton points out Jensen exhibited a strong interest in the software contract and even served as chairman of the PROMIS oversight committee.

In December of 1983, INSLAW's counsel, Elliott Richardson, and Hamilton met with the assistant Attorney General for administration, Kevin Rooney. They expressed their concern that Brick Brewer, the project manager on the INSLAW contract, was biased against the company because Bill Hamilton had fired Brewer some years earlier. Rooney testified in a deposition that, a week later, he told Jensen's oversight committee that Richardson's proposal seemed reasonable. It appeared that the dispute could be resolved. But Rooney left the committee meeting early. After he was gone, Hamilton says, "Mr. Jensen and the other members of the committee surprisingly approved a plan to terminate the word-processing part of the INSLAW contract with the department's Executive Officer for U.S. Attorneys."

In March of 1983, Hamilton alleges, Bill Tyson, formerly director of that Executive Office, told Hamilton that a Presidential appointee at Justice was biased against INSLAW. In March 1987, Tyson sent a hand-written letter to Jensen, reassuring him that he had denied this allegation under oath—and that he had not named Jensen as the appointee in question. He also sent a note to Deputy Attorney General Arnold Burns.

In a deposition, Tyson was asked:

"Did either Mr. Jensen or Mr. Burns ask you to write the letter?"

"No sir."

"Did you not realize that by writing a letter to Mr. Jensen of this type informing him of your intended testimony that he would then be able to develop his testimony to be consistent with yours?"

"That was not my intention."

"But as an attorney, you realize that is a possibility, more than a possibility?"

"Well, that was not my intention. . . ."

In his ruling last September, Judge Bason characterized portions of Tyson's testimony as "so ludicrous that there is no way I can believe anything that the man has to say."

A month before writing the notes, Tyson was removed from his position in the Executive Office for U.S. Attorneys, and he and his secretary were exiled to Justice's Immigration and Naturalization Service—though in positions commensurate with their grade levels.

By protesting too much, Tyson could seem to further implicate Jensen. But, the answer to "How High?" leads even higher. Ed Meese himself may have been involved in a push to force Leigh Ratiner, INSLAW's litigating attorney, off the case.

Ratiner had been a partner at Dickstein, Shapiro, & Morin for 10 years when Elliot Richardson recruited him to take on INSLAW. Dickstein, Shapiro was the law firm of Chuck Colson, of Watergate notoriety. Colson brought in its principal client, the Teamsters Union. More recently, Dickstein, Shapiro became known in the loop as Leonard Garment's firm. Garment, a former colleague says, has been described as "the only attorney in Washington who will put a senator on hold to take a call

from a reporter." Garment was former White House counsel to Richard Nixon, and represented Meese during his confirmation hearings.

Meese and Garment put their heads together again after Ratiner filed a complaint in the INSLAW case that named Meese's longtime friend and deputy Attorney General, Jensen.

Ratiner, an aggressive attorney with a reputation as very bright, ego-driven, and a loner within the Dickstein, Shapiro firm, relished being viewed as a maverick. So he was displaying his usual independence when he filed the complaint that named Jensen early in October 1986. On Oct. 12, the L.A. Times ran a story airing the INSLAW case and the former rivalry between Hamilton and Jensen. On Oct. 23, Ratiner was asked to leave the law firm. Between Oct. 12 and Oct. 23, Ed Meese talked to Garment about the case.

In a pre-trial interrogatory, Ed Meese conceded that he had a "general recollection of a conversation with Leonard Garment in which Mr. Garment mentioned that he had discussed INSLAW with Arnold Burns." Arnold Burns, the deputy Attorney General who resigned last week, replaced Jensen when Jensen left Washington to take a federal judgeship in San Francisco in the spring of 1986.

When *Barron's* asked Leonard Garment about the conversation, he emulated D. Lowell Jensen. He ducked. "I know there was a suggestion by Meese—or one of his staff—saying he met and spoke to me about INSLAW. Oh, he said it in pre-trial interrogatories? Then . . . it was a question of his recollection."

Garment was more emphatic regarding Ratiner's removal. "No one in the Justice Department or the whole U.S. government or the whole USA suggested to me that anything should be done with Ratiner. Nor do I remember mentioning INSLAW to Meese," he continues. "Look—I met with Meese around the date he mentioned, and I discussed with him a matter of foreign policy. I was on my way to Israel. . . . Memory is so tricky, but I don't have the slightest recollection. . . ." Finally, Garment collected his recollections and summed up his position. "As Sam Goldwyn said 'Include me out.' "

Ratiner's exit settlement with Dickstein, Shapiro bars him from discussing how and why he left. But Hamilton believes that Burns and Meese expressed dismay at the fact that he had turned the spotlight on Jensen. After Ratiner gave up the case, the firm continued to represent INSLAW, but Hamilton feels their support waned. In January of 1987, Dickstein, Shapiro urged him to settle with Justice for $1 million—of which about half would go to pay Dickstein, Shapiro's fees. A few days later, Hamilton switched attorneys. In September, Judge Bason awarded INSLAW $6.8 million—plus attorney's fees.

During the trial, Tony Pasciuto's boss, Thomas Stanton, testified to another reason why Meese might have been interested in the INSLAW case: INSLAW could besmirch the U.S. Trustee program. The U.S. Trustee's Office had been recently set up to administer bankruptcies nationwide, and it was Meese's baby. Meese made the decision to take the Trustee program national—even though his predecessor, William French Smith, had planned to ditch the pilot Trustee program.

Two of Pasciuto's former colleagues in the Justice Department allege that the move to keep the U.S. Trustee program was flagrantly political. "It was a way of getting cronies into office. There would be 50 or 60 positions to be filled," one asserts. Stanton, the director of the Trustee program, seemed well-protected within Justice. This former Pasciuto colleague adds: "It was always puzzling to me how he got away with what he got away with. He'd do things that were blatantly wrong and no one would question him—it's kind of scary." Another former employee confirms, "Irrespective of the law, or anything, if Stanton wanted something, he had the ear of the right people at the highest level—straight from Burns to Meese. If he could not get what he needed, he went to Burns."

Outside Justice, bankruptcy attorneys like Patrick Kavanagh, a solo practitioner in Bakersfield, Calif., worry that the Trustee program "concentrates so much power in one government department . . . It's supposed to act as a watchdog over lawyers and trustees, but the problem is it's more. It has a considerable amount of power to control the administration of cases."

When a case moves from bankruptcy to liquidation, the U.S. Trustee's Office names the trustee, who converts the assets, overseas an auction, and retains appraisers who will put a price tag on the leavings.

The U.S. Trustee's program also links Justice and the IRS. "The thing that's a little frightening about it is that the U.S. Trustee department sees itself as part of the tax-collecting function of government," observes Charles Docter, the bankruptcy attorney representing INSLAW. "The Justice Department represents the IRS, and the IRS is often the biggest creditor in a liquidation."

In the INSLAW case, tax collectors seem unusually determined to see their debt paid immediately. "The IRS showed up in Bill Hamilton's office the day after the trial ended in August. Ultimately, they would demand that he personally pay the $600,000 that INSLAW owes," says Docter. "Usually the IRS calls us before coming to see one of our clients," he notes. "We talk to them on the phone and get it straight." Hamilton doesn't have the $600,000 in his personal savings account.

But Docter responded to the pressure by writing a letter in which INSLAW promised to pay the withholding portion of the taxes within 30 days. "Normally, the IRS would wait that long" he says. "Instead, on the 28th day, they went out and filed to convert INSLAW from Chapter 11 to Chapter 7." Once again, they were trying to liquidate INSLAW.

Lately, Docter reports, an aggressive IRS has been pursuing withholding taxes by going after the individual who owns a company, "but normally they don't go for the jugular immediately and file for a motion to liquidate."

Still on the bench, Judge Bason managed to stop the IRS push to liquidate INSLAW.

When the tax collectors filed to convert INSLAW to Chapter 7, Docter recalls having a memorable conversation with an attorney from the Justice Department's tax division. Docter chided the attorney from Justice, saying: "Look, the judge has already found that you tried to steal the software through 'trickery and deceit.' Isn't it about time you stopped this heavy-handed stuff? Doesn't anyone in the department have enough guts to say, 'We have to start handling this like lawyers?' The whole thing is just completely sullying the Justice Department."

Docter states that the attorney from Justice replied: "I don't set policy around here. The Attorney General does."

And, Bill Hamilton remembers, Ed Meese approved the Justice Department bonuses awarded after the trial was over, in December of 1987. Three of the six who received bonuses were involved in the INSLAW case:

Stewart Schiffer, who directly supervised the INSLAW litigation, received $20,000.

Michael Shaheen, head of the "Office of Professional Responsibility," $20,000. Shaheen wrote a letter to Arnold Burns on Dec. 18 recommending that whistleblower Pasciuto be fired for exercising "atrocious judgment" in telling the Hamiltons what he knew.

Lawrence McWhorter, Brick Brewer's boss, $10,000. McWhorter, Judge Bason noted, said, "'I don't recall' or 'I don't know' something like 147 times in his deposition." The court found McWhorter's testimony to be "totally unbelievable."

Arnold Burns, deputy Attorney General until just last week, headed up the panel that received recommendations for Justice bonuses.

With no help from Uncle Sam, Bill Hamilton earned his own bonus. IBM has plans to enter a $2.5 million deal with INSLAW that will bail the firm out of bankruptcy. "About $1 million will be used for software development to integrate INSLAW's products with IBM's own database software," Hamilton says, "and $1.5 million will be used to finance INSLAW's reorganization." Details are still being negotiated.

"IBM's law firm has drawn up a contract. We expect to have it signed in two or three weeks," Hamilton adds.

In a 1981 speech, Edwin Meese had lauded INSLAW's work on PROMIS as "one of the greatest opportunities for success in the future." It seems he was right: The IBM deal provides the clearest evidence of all of the product's continuing value.

Still, the IRS persists in demanding immediate payment—even though the pending IBM contract, not to mention the $8 million owed by Justice, suggest that INSLAW will be able to pay its tax bill.

Charlie Docter, INSLAW's attorney, comments on the IRS posture: "The whole thing smacks of a police state. This case scares the hell out of me."

"Scary" is the word most often used by victims of the INSLAW affair. They are angry, but they also can't quite believe it happened.

That the U.S. Justice Department could engage in a vendetta that would end the career of a federal judge, bankrupt a company, force a partner out of his law firm, cause another federal judge to recant under oath, and reach down and wreck the career of a 21-year government-service employee—that's the stuff of a spy novel, set, one would hope, in another country. But resignations en masse from a Department of Justice inhabited by "moles" suggest alarming facts, not diverting fiction.

Bill Hamilton's story is not based on imagination. It's based on experience, and there's considerable circumstantial evidence that he could have been the victim of a California cabal encompassing onetime members of the Reagan gubernatorial cabinet, and alumni of the Alameda County Mafia. Ed Meese belonged to both groups.

Why did INSLAW rate the attention of such a powerful group? INSLAW was, one Senate staffer suggests, the leading edge of Justice's $200 million "Project Eagle," a plan to computerize the department's tax division, criminal division and the 94 U.S. Attorney's offices. INSLAW predates the four-year-old Project Eagle, and might well offer an easy entry to any company that wants to participate in that program. The Justice Department has taken pains to say that INSLAW is not involved in Project Eagle. But Senate staffers looking into both INSLAW and Project Eagle aren't so sure.

Project Eagle seems part of the same pattern of musical chairs: John J. Lane, a respected deputy assistant Attorney General for information technology, left last summer, and according to Government Computer News, Justice has lost its four IRM (information resources management) officials with the longest service in the past year. When Lane left, Justice reorganized its computer operations and created a new position, naming Stephen R. Colgate, who had been director of the Treasury Department's Office of Finance, to head Project Eagle.

Asked about his priorities, Colgate was quoted in the trade publication as saying that, for the leadership of the department, "Eagle is the No. 1 priority. Eagle is the technology legacy that this Administration wants to leave behind."

A member of Sen. Christopher Dodd's staff who has been looking into the INSLAW case for more than a year takes a more cynical view:

"If you wanted to wire [fix] something, this would be the project," he confides. "It's been anticipated for a long time. And, it's a lot of money. So, if you wanted to wire something . . . this would be the one."

These days, however, it's unlikely anyone at Justice wants to wire anything. Today, there's a new agenda: Everyone is either burrowing in, or getting out. And, before leaving, there's an urgent desire to tidy up.

Justice had announced its intention to fire Tony Pasciuto two months ago. But in the end, just a week before Deputy AG Arnold Burns resigned, he agreed to meet with Pasciuto's attorney, Gary Simpson, to hear Pasciuto's side of the case.

Five or six officials from Justice were in the room; another three or four—including one who had recommended firing Pasciuto—waited nervously in the hallway outside.

"I was on a roll," confesses Simpson, who is normally matter-of-fact. "It was something else. I was accusing them of all sorts of things, and no one stopped me."

Justice ultimately proposed a painless solution: Pasciuto should walk away, go work somewhere else, and they'd acknowledge he had been a good employee.

During the meeting, Simpson did most of the talking. "Burns was really taking it on the chin," he recalls. "He jerked back a couple of times, but he didn't say anything. More than once, he nodded assent. When I stated that Blackshear had recanted, he nodded again. And," Simpson concludes, "Burns didn't look like he was hearing any of it for the first time."

WHERE ARE THEY NOW?

Leigh Ratiner has left the practice of law. The man who once negotiated the Law of the Sea treaty for the U.S. government now runs his own business, LSR Enterprises, a maker of filing systems for lawyers.

Judge Bason, who was denied reappointment as a federal bankruptcy judge, is still unemployed, and looking for work. Judge Bason has no regrets, though he concedes he does not relish controversy. Indeed Judge Bason tried to have himself taken off the INSLAW case when it first came up. "I talked to the chief justice of the District Court and said, 'This has the potential of becoming a very hot potato.' I wasn't sure I wanted to get involved in it." George Bason is not, by temperament, a fighter.

"My wife tells me I'm very stubborn," the 56-year-old former law professor confesses. "It takes me a long time to make up my mind about things and I tend to reserve judgment until I know as much as I can. But when I make up my mind, I'm very firm. To a very aggressive person I may give the impression of being a pushover, and when I prove not to be one, such people can be very angry."

Tony Pasciuto is luckier. He has been offered a good job at a large financial firm based in New York. If he takes it, he'll be making a lateral move from Justice into the private sector. Meanwhile, his attorney, Gary Simpson, awaits final word on Pasciuto's honorable discharge from the department. The papers are scheduled to be signed today.

[From the American Lawyer, Dec. 1987]

VENDETTA

(By Mitchell Pacelle and Robert Safian)

On Monday, June 9, 1986, the Hamilton family went on an outing. William Hamilton, his wife, Nancy, and their six children, ages 3 to 22, piled into the family station wagon and drove to the federal courthouse in Washington, D.C. There, Hamilton filed a $30 million suit against the Department of Justice. The suit would change his life—and would come to wreak havoc in the federal government.

"It was a bittersweet kind of day," recalls Hamilton, a stocky man of 47 who is president of the nation's leading law enforcement case-management software company. Hamilton had hoped to avoid a legal battle against his most important customer. In more than 20 years of dealing with the government, says Hamilton, he had never encountered a problem that he couldn't solve without confrontation.

But this time he was stuck. Despite legal help from former attorney general Elliot Richardson, Hamilton could not budge the department.

The suit was anything but conventional. It mentioned contract law, bankruptcy law, and computer software copyrights. But its focus was an outlandish allegation of a conspiracy within Justice.

Hamilton charged that a Justice employee who held an old grudge against him had tried to drive Hamilton's company out of business by disrupting the administration of his company's $10 million contract with the department. And when he asked high-ranking Justice officials to investigate the possibility of bias, Hamilton alleged, they had ignored his pleas.

The claims reeked of paranoia. Hamilton's company had gone into bankruptcy in early 1985. Hamilton, it appeared, was looking for someone other than himself to blame.

In time, however, depositions from Justice Department officials, documents, and testimony during four days of hearings and two weeks of trial would paint a far different picture. They would convince a federal bankruptcy judge that the vendetta Hamilton suspected did, in fact, exist—and that higher-ups in the department had irresponsibly refused to take account of the injustice.

Justice Department officials did not return phone calls or declined to comment on the case, citing pending litigation. But in an interview in his downtown D.C. office, Hamilton talks about his disturbing experiences with Justice. "I think, in a perverse way, I was . . . slow to catch on," he muses. He taps his foot nervously. "I feel silly," he says. "I wasn't paranoid enough."

THE RISE AND FALL OF INSLAW

Hamilton's dealings with the federal government began in 1962, when he joined the Defense Department's intelligence division, the National Security Agency. Fresh from Notre Dame University, Hamilton stayed at NSA for seven years, rising to deputy branch chief. In the process, he developed a sophisticated understanding of computers.

By 1969 the agency's "hermetically sealed environment" made him long for "a normal life," Hamilton says, so he parlayed his computer expertise into a job in the management consulting department of Peat, Marwick, Mitchell & Co. Within a few months he started a project to develop case-tracking software for the U.S. Attorney's Office in D.C. The result—the Prosecutor's Management Information System, known as PROMIS—was widely considered the nation's first justice management software.

PROMIS so excited Hamilton that in 1971 he left Peat, Marwick to improve the software, which by contract rights belonged to the government. After 18 months as an independent contractor for the U.S. Attorney's Office in D.C., he created his own not-for-profit company called the Institute for Law and Social Research and continued to improve PROMIS with grants from the Justice Department's Law Enforcement Assistance Administration.

When LEAA was dismantled in 1981, Hamilton organized INSLAW, Inc., a private corporation, to buy out the assets of the not-for-profit company. Because it had been developed with government funding, PROMIS was in the public domain. Hamilton, however, raised private funds to refine the software and claimed the hybrid—the publicly funded software with its privately funded enhancements—as a proprietary product. He marketed the hybrid, still called PROMIS, and several derivatives to prosecutors, court systems, private attorneys, and others.

It seemed that Hamilton had gotten his big break in March 1982 when the Justice Department awarded INSLAW a three-year, $10 million contract to computerize the Nation's 94 U.S. Attorney's Offices. According to the contract, INSLAW was to install the original PROMIS software, plus five additions that were in the public domain, on minicomputers in the 20 largest offices, and to develop a modified version of the software to run on word processors in the smaller offices. In the fiscal year begining October 1, 1982, INSLAW's revenues went up about 35 percent to $7.8 million—more than half of it from the U.S. Attorney's Office contract. By 1984 INSLAW employed more than 180 people. Hamilton and his wife, Nancy, who together owned 60 percent of INSLAW, ploughed their profits back into the company. It seemed like the best investment they could make.

But the bubble burst almost immediately. The first disturbing signal from Justice came in a November 1982 letter in which the department requested that Hamilton deliver to Justice the PROMIS documentation and source codes that would allow Justice to install the system itself. He refused, contending that some of the software was private property

Two months later Justice threatened to postpone certain payments to INSLAW. Hamilton gave in and handed over the documentation, including the hybrid software. Justice, in turn, withdrew its threat and agreed to negotiate with INSLAW for the right to use the hybrid—*if* INSLAW could prove that it was privately funded and *if* the government chose to install it.

Hamilton's troubles with Justice intensified. In July 1983 the department suspended nearly $250,000 in payments to INSLAW claiming the company was overcharging the government for time-sharing. Finally, in February 1984, the government terminated INSLAW's contract to put PROMIS onto word processors at the smaller U.S. Attorney's Offices, a project that has been generating revenues of $200,000 to $300,000 a month, according to Hamilton.

Suddenly INSLAW's finances were in shambles. By February 7, 1985, the government had withheld payment on $1.77 million in costs and fees. INSLAW, the market leader, filed for bankruptcy. Hamilton says he was mystified. How could everything he had built fall apart so fast—and with no explanation?

Hamilton's paranoia quickly found a focus: C. Madison "Brick" Brewer, who managed the PROMIS installation for Justice. Brewer had spent most of his career in the U.S. Attorney's Office in D.C.—except for two years as general counsel of INSLAW's not-for-profit predecessor. Hamilton says he himself had fired Brewer in 1976. Brewer, he adds, is a "very amiable, pleasant guy" but did not follow through on nonlegal tasks assigned to him. Although there was no "ugly disagreements," Hamilton says, he was uneasy when he realized that he would have to deal with Brewer on the Justice contract. He worried that Brewer might hold a grudge. Now, it seemed his fears had been realized.

THE SILENT TREATMENT

For three years, Hamilton and his changing cast of attorneys tried unsuccessfully to find someone at Justice who would listen to Hamilton's suspicions about Brewer and undertake a serious inquiry. The indifference they encountered only confirmed Hamilton's fears that someone in Justice was out to get him.

Hamilton begin by asking Brewer's superiors—William Tyson, the director of the Executive Office for U.S. Attorneys, and deputy director Laurence McWhorter—to investigate. Both later testified that they spoke to Brewer but found nothing to warrant taking him off the project. The Justice procurement staff, which oversaw the PROMIS project, was equally unresponsive to requests from INSLAW's contracts attorney, Harvey Sherzer, then a partner at D.C.'s 22-lawyer Pettit & Martin and now a partner at 122-lawyer Howrey & Simon.

Early in 1983 Hamilton enlisted the help of former attorney general Elliot Richardson, a partner in the D.C. office of New York's Milbank, Tweed, Hadley & McCloy. A supporter of Hamilton's computer innovation at Justice in the 1970s, Richardson had been the chairman of the board of trustees of INSLAW's not-for-profit predecessor.

"It was important, in the circumstances, to try to find a level in the Department of Justice at which there could be some assurance, or hope, that the matter would be dealt with objectively and on the merits," explained Richardson in subsequent testimony. "That, it seemed to me, was a service that I might be able to provide." He became the biggest gun in Hamilton's arsenal of attorneys.

According to one INSLAW lawyer, however, Justice attorneys "took offense that Bill was going to people like Elliot Richardson. . . . There was the intimation that he was going over their heads, going outside of normal channels."

In fact, Richardson didn't waste time with underlings: He went right to deputy attorney general Edward Schmults, the number-two man at Justice. Schmults referred him to the assistant attorney general for administration, a position that would turn out to be a revolving door. For more than a year Richardson negotiated fruitlessly with three consecutive assistant attorneys general for administration.

After INSLAW went bankrupt, Richardson—along with well-connected Republican Donald Santarelli of D.C.'s Santarelli, Smith, Kraut & Carroccio—decided to try again with the deputy A.G. By now, the position had been assumed by D. Lowell Jensen.

The frustrating result of the March 1985 meeting with Jensen was another round of negotiations that ended when management division general counsel Janis Sposato insisted that INSLAW—which claimed Justice owed it $1.77 million—pay $680,000 *to* Justice and acknowledge the government's right to unrestricted use of the software for any federal project. Sposato also announced that the government would not pay any additional fees for software obtained under the contract.

In later testimony, Richardson described the government's offer as a blunt, " 'Screw you, Mr. Richardson.' . . . It's an offer that condemns INSLAW to death." Hamilton's bankruptcy lawyer, Charles Docter of D.C.'s six-lawyer Docter, Docter, & Salus, agreed. "We concluded that the Justice Department was completely prejudiced against [Hamilton]," Docter recalls. "Mr. Brewer had marshaled the troops."

Hamilton was running out of people to complain to. He and his lawyers had approached a dozen department officials, including general counsel Sposato, many of them more than once. Santarelli had followed up his meeting with Jensen with a letter to Attorney General Edwin Meese III. No one had taken the allegations seriously enough to start an investigation.

ENEMIES AT THE TOP?

Desperate for results, Hamilton and Richardson made another plea to deputy attorney general Jensen. The "last-ditch effort," as Richardson describes it, took place on December 4, 1985. "I told [Jensen] that I could only conclude that the performance of the department had been scandalous," said Richardson in later testimony. "I was not trying to get his view or to get him to assume responsibility . . . but only to grasp the fact that what we genuinely believed to be meritorious positions were not getting addressed at all."

Jensen's response, recalls Richardson, "was tentative and noncommittal." Jensen did mention, however, that he wasn't impressed with PROMIS.

Hamilton was disturbed. He remembered that when he introduced PROMIS in the 1970s, Jensen, then district attorney for Alameda County, California, was touting a similar case management software package he had helped develop but in which he says he had no financial interest. That Jensen would bring up his opinion of the PROMIS software made Hamilton wonder, he says, whether INSLAW had more powerful enemies than Brewer.

Jensen, now a federal district judge in San Francisco, declined comment for this article. He did, however, discuss his meeting with Richardson and Hamilton in a deposition in June. "I don't recall that I said that I was not impressed with PROMIS," he stated. "I think it was more of a relative statement in terms of whether . . . I would use PROMIS or something else [in the district attorney's office]."

Shortly after the meeting Richardson suggested a suit. Hamilton, finally convinced that Jensen would not step in and solve his problems, agreed.

Leigh Ratiner—a partner at D.C's Dickstein, Shapiro & Morin whom Richardson had recruited—devised a strategy to circumvent the department's sovereign immunity from fraud claims. Ratiner framed the complaint as an adversary proceeding within INSLAW's Chapter 11 reorganization, charging the government with violating the automatic stay provision of the bankruptcy code. By misadministering the PROMIS contract, Ratiner claimed, the department was interfering with INSLAW's efforts to reorganize.

INSLAW filed suit in June 1986, accusing Brewer of seeking revenge on Hamilton by forcing INSLAW into bankruptcy and "threatening to expand improperly" its use of INSLAW's proprietary software. The suit also accused deputy attorney general Jensen of having a "negative view" of PROMIS and failing to stop Brewer's misconduct.

If Hamilton harbored any hopes that Justice would settle once the charges were public, he was wrong. In July Ratiner met with deputy attorney general Arnold Burns, who had replaced Jensen. Burns had already received a letter from Maryland senator Charles Mathias, Jr., asking him to consider settling the INSLAW case. But once again, INSLAW was rebuffed.

Hamilton's litigation plans soon began to unravel. In October Ratiner informed Hamilton that he would be leaving Dickstein, Shapiro. (As reported in *Legal Times,* Hamilton asserts that Dickstein, Shapiro partner Leonard Garment—who has represented Attorney General Meese—forced Ratiner out in an effort to stymie the suit and shield the Justice Department from Hamilton's allegations. Garment and the firm deny the charges, and Ratiner declines comment on his departure.)

A few months later Dickstein, Shapiro dropped INSLAW. Garment says the firm had satisfied its commitment to take INSLAW up to the trial. By the time the firm pulled out, INSLAW owed $464,000 in fees.

With discovery beginning, Hamilton found himself with no trial counsel and no funds to pay one. Richardson, who is not a trial lawyer, says he shopped the case to one D.C. firm, which declined to take it. He didn't even ask his own firm, he says, because there were no litigators at Milbank, Tweed's D.C. office.

Increasingly desperate, Hamilton turned to two friends: Brian O'Neill of Santa Monica, California's seven-lawyer O'Neill & Lysaght and Michael Lightfoot of Los Angeles's seven-lawyer Talcott, Lightfoot, Vandevelde, Woehrle & Sadowski. Both agreed to come east to help with discovery on a contingency basis.

But Hamilton still had no trial counsel. As he had done repeatedly, he consulted Charles Work, one of his closest friends. A former assistant U.S. attorney in the first office Hamilton had computerized and later a deputy administrator of LEAA, Work had become a litigation partner at the D.C. office of Chicago's McDermott, Will & Emery. He offered to pitch in and recruited his partner Michael Friedlander, plus Philip Kellogg and James Lyons of D.C.'s three-lawyer Kellogg, Williams & Lyons. All worked on contingency.

A SMOKING GUN

Meanwhile Nancy Hamilton had stumbled upon a seemingly innocuous Justice Department document—a note handwritten by the contracting officer on the PROMIS project, Peter Videnieks: "JR called. Brick talked to Stanton, 'No way 11—will be 7.'"

Videnieks's note, dated February 25, 1985, just three weeks after INSLAW had filed for bankruptcy, apparently referred to a conversation with Jack Rugh, assistant to Hamilton's nemesis, Brick Brewer. As INSLAW's lawyers interpreted the note, Rugh told Videnieks that Brewer had directed William Stanton to convert INSLAW's Chapter 11 reorganization to Chapter 7 liquidation. Stanton was the director of the Justice Department's Executive Office for U.S. Trustees, the central administrative office of a then-experimental program of semi-autonomous local trustees who act as fiduciaries for bankruptcies within their regions.

The note Nancy Hamilton uncovered raised a new specter: that Brewer was compromising the impartiality of the U.S. Trustee program in an effort to block INSLAW's reorganization and wipe out the company. As director Stanton would concede in his deposition, he needed support for pending legislation to make the program permanent. That need, Hamilton and his lawyers feared, could make Stanton susceptible to pressure from officials like Brewer.

"This case scared the living daylights out of me," says bankruptcy attorney Doctor of Brewer's alleged attempt to interfere with the bankruptcy process. "This is police state stuff. It's just outrageous."

Once again, Hamilton turned to the courts. On February 25, 1987, INSLAW filed an unusual petition with federal bankruptcy judge George Bason, Jr., who was overseeing INSLAW's bankruptcy and the adversary suit. Doctor submitted Videniek's note as evidence that "previous efforts to seek a fair and equitable settlement have been obstructed by the behind-the-scenes involvement of the very parties whom INSLAW has accused of misconduct." INSLAW's petition asked for undefined "court assistance to obtain independent handling" of its case.

In his March 11 ruling ordering an evidentiary hearing on the petition, Judge Bason himself offered corroboration of INSLAW's charges. He revealed that in 1985 the U.S. trustee assigned to INSLAW's bankruptcy, William White, had asked the judge to bar White from sharing confidential information about the company with any other department employee. White, it now seemed, had been protecting himself from Justice Department pressure.

Hamilton did not have to rely on such circumstantial evidence for long. For two or three months, Mark Cunniff, executive director of the National Association of Criminal Justice Planners and a friend of the Hamiltons, had been relaying information from a friend at the Executive Office for U.S. Trustees. The friend was deputy director for administration Anthony Pasciuto, who by his own admission did

not get along with office director Stanton. Cunniff eventually convinced Pasciuto to meet the Hamiltons for breakfast at D.C.'s Mayflower Hotel on St. Patrick's Day.

That breakfast was a turning point. According to Nancy Hamilton's contemporaneous notes and her later trial testimony, Pasciuto confirmed what had first seemed to be paranoid fantasies: He said that trustee White had confided that in 1985 Stanton had pressured White to convert INSLAW's bankruptcy to chapter 7 liquidation. Moreover, when White resisted, Stanton tried unsuccessfully to have an assistant from the U.S. Trustees office in New York take over the case and convert it. And, Pasciuto said, Cornelius Blackshear, the U.S. trustee in New York at the time of INSLAW's Chapter 11 filing, knew all about Stanton's scheme.

The Hamiltons left breakfast both shocked and excited. Their suspicions were true—and now, really for the first time, it seemed that they could prove it.

RELUCTANT WHISTLEBLOWERS

Hamilton's lawyers set about to corroborate Pasciuto's story. On March 25 they deposed Blackshear, now a federal bankruptcy judge for the Southern District of New York. White, he stated, had told him that Stanton wanted INSLAW liquidated and had pressured White to go along. Blackshear also testified that he had heard rumors from other sources that unnamed people in the Justice Department had an interest in putting INSLAW out of business. The Hamilton team was jubilant.

Their high spirits didn't last. The very next day, in an unusual ex parte affidavit, Blackshear recanted. "I testified that William White had advised me that Tom Stanton had brought pressure on him to convert the INSLAW case [to Chapter Seven]," said Blackshear. After two conversations with White, Blackshear concluded, "I now recall that no such discussion took place."

Blackshear now explains, "After consulting with the people whom the hearsay testimony had come from, I discovered that my recollection was cloudy."

"It was like the world just collapsed around Tony [Pasciuto]," says Cunniff. "He was devastated. He was getting real concerned. He was the guy out in left field."

When Hamilton's lawyers deposed Pasciuto, he conceded that "[White] was angry about . . . the Executive Office [for U.S. Trustees'] interference in INSLAW." But he backed away when probed about Stanton's connection to the INSLAW bankruptcy. "I have to go back and work in this place," he pleaded.

Hamilton's lawyers, however, stayed with their game plan. In May and June, during four days of hearings on INSLAW's bankruptcy, they argued that the company needed court assistance to ensure the independence of the U.S. trustee handling its case.

Presented with the "No way 11—will be 7" note, Rugh testified that it referred only to his opinion of INSLAW's prospects, based on his knowledge of the company's finances. White, who now practices bankruptcy law at Alexandria, Virginia's 160-lawyer Hazel, Thomas, Fiske, Beckhorn & Hanes, denied that Stanton had pressured him to convert INSLAW's case.

Stanton vehemently denied that he wanted INSLAW liquidated. It was solely because of White's inexperience that he tried to bring an assistant trustee down from New York to take over the case, Stanton claimed. With the future of the trustee program at stake, he testified, he "didn't want the case to fail on some administrative error that would make us look bad."

Pasciuto, the Hamiltons' "Deep Throat," testified that he knew of no pressure on White to convert the INSLAW bankruptcy from Chapter 11 to Chapter 7. One of Hamilton's lawyers, Philip Kellogg, reluctantly asked Judge Bason's permission to cross-examine their own witness. In a dramatic exchange, Kellogg confronted Pasciuto with Nancy Hamilton's notes of their Mayflower breakfast. Pasciuto hemmed and hawed. He became so distraught the judge called a brief recess. But Pasciuto did not change his testimony.

VINDICATION

With the government witnesses closing ranks against Hamilton, it was far from certain that Judge Bason would see things Hamilton's way. But on June 12, the judge ruled that the government had indeed tried to force INSLAW into liquidation. He called Stanton's testimony "evasive and unbelievable" and adopted a preliminary ruling in which he had termed Stanton's actions "a clear abuse of authority, utterly improper, and most severely to be condemned and punished." Rugh's testimony, said Judge Bason, was "inherently incredible," and Judge Blackshear's recantation "an honest mistake." As for White, the judge concluded that he had exercised a "capacity to forget" when he denied the whole scheme.

Bason forbade anyone from the Executive Office for U.S. Trustees or the Justice Department from contacting INSLAW's trustee about the case and invited Attorney General Meese to appoint someone outside Justice to review INSLAW's dispute with the department. The judge awarded INSLAW $1,000 in compensatory damages, plus legal fees associated with the hearing, which Hamilton estimates at $250,000.

According to a Justice spokesperson, the department has not yet decided whether to act on Bason's suggestion for an independent review. However, in July the department's Office of Professional Responsibility initiated an investigation of Brewer.

New York bankruptcy judge Blackshear takes issue with Bason's vehemence, pointing out that only the judge overseeing a bankruptcy has the power to convert the case. "If everything the parties alleged about Tom Stanton is true, you still have a 'So what?' says Blackshear. "The trustee cannot convert anything." (Responds one New York bankruptcy partner: "The U.S. trustee is given in most cases some real deference. . . . He's there as an impartial administrator.")

GOING AFTER BREWER

The bankruptcy hearings had brought Hamilton and his lawyers a taste of victory, but only on the narrow issue of the trustee program. Justice still declined to settle the pending $30 million suit.

Judge Bason decided to split the litigation into two phases. The first would focus on Brewer's alleged bias, Justice's alleged misconduct in not removing him from the PROMIS project, and the government's alleged theft of INSLAW's proprietary software. The second (as yet unscheduled) would examine INSLAW's complaint that Justice filed a sham counterclaim against the company, engaged in bad faith negotiations, and interfered with INSLAW's business development.

In late July and early August, INSLAW attorney Michael Friedlander outlined to the judge the story Hamilton had told Justice officials for so long with so little success—a story of government conniving and manipulation orchestrated by Brick Brewer and, in Elliot Richardson's words, "complemented and allowed to run its course by ill will at the higher level," meaning former deputy attorney general Jensen.

The government's lawyers responded that the case was a simple contract dispute. Although there were certainly differences of opinion between the parties, they claimed, there was no malice or misconduct.

The high point of the trial came on July 29 when the alleged villain, Brick Brewer, took the stand. Government attorney Sandra Spooner, deputy director of commercial litigation in the civil division, zeroed in on Hamilton's basic premise: that Brewer held a grudge because he had been fired as general counsel of INSLAW's not-for-profit predecessor. Brewer testified that he had not been fired but had decided to leave.

In his cross-examination, McDermott, Will's Michael Friedlander reminded Brewer of his deposition testimony that Hamilton had "a very, very distorted view of reality" that was "mentally defective," then asked whether Brewer had disclosed this opinion when he was interviewed for the job that would put him in control of the INSLAW project. No, Brewer responded. "I saw my views about Mr. Hamilton as being totally irrelevant," he said.

Friedlander confronted Brewer with notes from an April 1982 meeting attended by Brewer, his deputy Rugh, and contracting officer Videnieks that read, in part, "Termination for convenience discussed." The subject, Friedlander contended, was the month-old PROMIS contract. Brewer testified that he did not recall the meeting and asserted that considering termination so early in the contract period was "ludicrous." (Both Rugh and Videnieks testified that they could not recall the meeting.)

Then Friedlander asked Brewer about the department's use of PROMIS following the end of INSLAW's contract in 1985. Brewer admitted that Justice had subsequently installed the hybrid in U.S. Attorney's Offices not covered by the contract. The decision was made willingly? Friedlander asked. "Yes." Knowingly? "Yes." Intentionally? "Yes."

Brewer stood firm. He testified that the department had no obligation to negotiate with INSLAW over the hybrid. The software, he insisted, had been developed with government funds and was thus in the public domain.

BASON'S BLAST

Judge Bason rendered his verdict on September 28 in a packed D.C. courtroom. Speaking in soft, measured tones that at times seemed to drip with sarcasm, Bason likened the Justice Department's behavior to that of a bawling, spoiled child. There

was suppressed laughter from spectators. He continued sternly, comparing Justice to a shyster who drives off with a car dealer's loaner car and never returns.

The department, Bason ruled, had "engaged in an outrageous, deceitful, fraudulent game of cat and mouse, demonstrating contempt for both the law and any principle of fair dealing." Justice "took converted, stole INSLAW's enhanced PROMIS by trickery, fraud, deceit," he said, and its actions were "willful, wanton, deceitful."

Bason agreed that Hamilton had fired Brewer; that Brewer knew it ("It's not the sort of thing that someone can have a misunderstanding about"); and that Brewer acted on his "lust for revenge," using Rugh and Videnieks as witting accomplices. Brewer's testimony, said Bason, was "entirely colored by his intense bias and prejudice."

Contracting officer Videnieks and Brewer's assistant, Rugh, the judge decided, were "infected [by Brewer's] poisonous attitude" and by their own desires for advancement.

Judge Bason chastised Justice for its unresponsiveness to Hamilton's repeated requests for an investigation of Brewer. "A very strange thing happened at the Department of Justice in response to these complaints," said Bason. "Absolutely nothing. . . . The investigation, according to the government officials' own testimony, consisted solely of asking Mr. Brewer, 'Were you fired? Are you biased?' It is as though they were to go up to any person charged with a crime on the street and say, 'Did you steal this particular item?' or 'Did you happen to kill so-and-so?' and when he says, 'No,' that is the end of the investigation. I can't imagine that the Justice Department would solve any crimes if that is the way investigations were normally conducted."

"The failure to even begin to investigate," remarked Bason, constituted "an institutional decision by the Department of Justice consciously made at the highest level simply to ignore serious questions of ethical . . . impropriety made repeatedly by persons of unquestioned probity and integrity."

Judge Bason blasted McWhorter, Brewer's boss and friend, for having "said 'I don't know' something like one hundred forty-seven times" in response to deposition questions about INSLAW: he called Tyson's glowing description of Brewer's work on the INSLAW contract "so ludicrous there is no way I can believe anything the man has to say"; and he excoriated management division general counsel Sposato for "what can perhaps charitably be described as willful blindness to the obvious."

But the judge never singled out the senior officials to whom Elliot Richardson had complained, and he made only one remark about former deputy attorney general Jensen, who had been named in INSLAW's complaint. In his deposition, said Bason, Jensen "appeared to acknowledge the general principle" that it is a "bad idea" for the government to hire the former employee of a government contractor to supervise that company's government contract. But, Bason concluded, "I didn't get any hint in his testimony that he recognized that there was any possible applicability of the general principle to the case of Mr. Brewer and INSLAW."

The judge ordered Justice to pay INSLAW for the use of its software, the amount to be determined at a later hearing. (Hamilton claims standard licenses on the software will cost Justice about $5.4 million.)

The judge also barred Brewer, Rugh, and Videnieks from any futher contact with INSLAW or the PROMIS project, awarded INSLAW legal fees, which Hamilton estimates at more than $1.5 million, and granted INSLAW sole ownership of the hybrid software.

Justice attorney Dean Cooper declines comment on the verdict. Amelia Brown, a Justice spokesperson, promises an appeal. "We feel that the department's conduct in this matter was lawful and proper," she says.

Brewer, in a post-verdict statement to the press, commented, "INSLAW has succeeded through a scheme of personal attacks and slander to avoid scrutiny of their performance. The ultimate losers are the taxpayers of the United States." At press time Brewer remains an associate director of the Executive Office for U.S. Attorneys.

FILLING IN THE GAPS

Unlike an Agatha Christie novel in which the scattered clues eventually fit together and the culprits are exposed, parts of the INSLAW saga are still shrouded in mystery. Hamilton and his attorneys have unearthed no direct links between Brewer and higher-level officials. And no one at Justice has been willing to address the issue of the department's unresponsiveness to Hamilton's requests for a serious investigation of Brewer's alleged bias.

"As a former seasoned bureaucrat," says Hamilton's ex-lawyer Ratiner, a veteran of 15 years in the government, "it's very easy for me to understand how you could get into this kind of situation. It's difficult for me to understand how—once officials were informed of it—it wasn't stopped."

Hamilton is particularly puzzled. While he agrees with Judge Bason that Brewer was the linchpin of the conspiracy, Hamilton doesn't understand the indifference he and his lawyers encountered from high-level Justice officials, including Jensen. Somehow the checks and balances broke down. Hamilton says he is still searching for evidence of a wider conspiracy.

"It's a bizarre story," he admits. "I'm sure I would take it with a grain of salt if I were listening to it. The federal government just isn't supposed to work like that."

APPENDIX F

U.S. SENATE,
Washington, DC, June 27, 1987.

Hon. EDWIN MEESE III,
Attorney General, U.S. Department of Justice,
Washington, DC.

DEAR MR. MEESE: On Friday, June 12, 1987, the Honorable George F. Bason, United States Bankruptcy Court Judge, found the Department of Justice in contempt of court for unlawfully attempting to put Inslaw Inc. out of business in 1985.

Judge Bason included an invitation to you in his ruling to designate an appropriate government official outside of the Department of Justice to review all disputes between Inslaw and the Department of Justice. After following this case for two months, I fully believe that it would be in the best interest of all involved for you to follow Judge Bason's recommendation.

Also, I have written two letters on this matter to the Deputy Attorney General Arnold Burns. On May 7, 1987, Mr. Burns responded to my first letter of April 14, 1987. However, my second letter mailed on May 14, 1987 has not drawn a response. As a United States Senator, I expect the courtesy of a reasonably prompt reply.

Thank you for your cooperation and I look forward to your reply.

Sincerely,

CHRISTOPHER J. DODD,
U.S. Senator.

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AND INTERGOVERNMENTAL AFFAIRS,
Washington, DC, July 1, 1987.

Hon. CHRISTOPHER J. DODD,
U.S. Senate, Washington, DC.

DEAR SENATOR DODD: This is to acknowledge receipt of your letter of June 27, 1987, to the Attorney General, received by the Department on June 30, 1987, concerning the Inslaw case.

A further response will be forthcoming as soon as possible.

Sincerely,

JOHN R. BOLTON,
Assistant Attorney General.

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AND INTERGOVERNMENTAL AFFAIRS,
Washington, DC, August 31, 1987.

Hon. CHRISTOPHER J. DODD,
U.S. Senate, Washington, DC.

DEAR SENATOR DODD: This has reference to your recent correspondence on behalf of Inslaw, Inc.

Because our litigation with Inslaw is currently pending before the Bankruptcy Court and the Department of Transportation Board of Contract Appeals, it remains inappropriate for us to comment on the merits of the litigation. The Inslaw litigation is but one of many hundred procurement disputes brought by government contractors before the courts and contract appeal boards. It differs, if at all, from other such disputes only in the breadth of the allegations which have been made, the willingness of the Bankruptcy Court to entertain these allegations instead of deferring to tribunals with specialized procurement jurisdiction, and the number of contracts which the contractor has made with the media and Members of Congress.

We can only assure you, as we have in the past, that our position in this litigation has been carefully reviewed at all levels within the Department. The trial attorneys

and their supervisors who are responsible for the litigation have no connection whatsoever with the individuals who are responsible for the administration of the contract. All of these attorneys remain satisfied that our position in the matter is entirely appropriate and should ultimately be vindicated by the courts.

Sincerely,

JOHN R. BOLTON,
Assistant Attorney General.

APPENDIX G

U.S. SENATE,
SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS,
Washington, DC, April 26, 1988.

Hon. EDWIN MEESE III,
Attorney General, Department of Justice,
Washington, DC.

DEAR MR. ATTORNEY GENERAL: As Chairman of the Permanent Subcommittee on Investigations, I have authorized the Subcommittee staff to conduct an investigation into actions taken by the Department of Justice with respect to INSLAW, Inc. Recent rulings by the U.S. Bankruptcy Court for the District of Columbia in an adversary proceeding brought by INSLAW against the Department, along with various allegations which have arisen subsequent to the INSLAW litigation, raise serious questions of impropriety with respect to the Department's procurement and contracting practices, its administration of the bankruptcy trustee program, and its willingness to detect and prevent situations of actual or apparent conflict of interest.

To enable the Subcommittee to discharge its obligations in this matter, I am writing to request your cooperation in making available to the Subcommittee those individuals listed in Enclosure A to this letter. In addition to the individuals listed in Enclosure A, I request that you identify and make available to the Subcommittee all other officials and employees of the Department who participated in, or have knowledge of, any actions taken by or within the Department which relate to, or concern INSLAW, Inc., its officers, directors, employees, agents, creditors, products or business.

Specifically, the Subcommittee is interested in any individuals who were involved in, or have knowledge of, Justice Department actions concerning:

1. the negotiation and administration of all contracts between the Department, or any of its offices, divisions, bureaus, or services, and INSLAW, Inc. and/or Bill Hamilton;
2. ownership of, rights in, or use of, the PROMIS software;
3. INSLAW, Inc.'s bankruptcy proceedings and reorganization plans; and
4. all adversarial proceedings between INSLAW, Inc. and the Department or any other agency of the Federal Government.

In identifying such individuals, please state the matter or matters in which each participated or as to which each has knowledge.

I also request that you provide the Subcommittee with access to all documents in the possession, custody, or control of those individuals identified which relate to, or concern their participation or knowledge, as well as access to any other files within the Department that relate to or concern INSLAW, Inc.

In addition to the above requests, the Subcommittee will also need the following:

1. The identification of any and all contracts awarded by the Department, or any of its offices, divisions, bureaus, or services, to Hadron, Inc., Acumenics Research & Technology, Inc., Infotechnology, Inc., Biotech Capital Corp., or any of their subsidiaries, from 1983 to the present, as well as, for each contract provided, a) the company to which the contract was awarded; (b) the year the contract was awarded; c) the dollar amount of the contract; d) the length of the contract; e) the services which were, or are to be, provided under the contract; f) the entity for which the services were, or are to be, provided; (g) whether the contract was competitively bid or no-bid, and h) the identity of the Department contracting officer involved.
2. A comprehensive briefing on Project Eagle, including the reasons for the procurement, a history of all actions taken in connection with the preparation and issuance of the Request for Proposals for this procurement, the identity of all Department officials and employees who have played a role in the procurement, the identity of all bidders on the procurement, and the amounts of each bidder's bid.

3. A comprehensive briefing on the contract recently awarded by the Lands and Natural Resources Division to Acumenics Research and Technology, Inc. for the provison of automated litigation support services, including the purpose of the contract, the identify of all Department officials and employees who played a role in the awarding of the contract, the identity of all other bidders on the contract and the amount of their bids, and the identity of any bidders who were disqualified and reasons for their disqualification.

4. A comprehensive briefing on the status and/or disposition of any and all investigations or inquires conducted by the Department's Office of Professional Responsibility into the actions of C. Madison Brewer, D. Lowell Jensen, Anthony Pasciuto, or any other official or employee of the Department, with respect to INSLAW, Inc., including the identity of all individuals who were, or are responsible for the conduct of these investigations.

Your continuing cooperation on this and other matters of interest to the Subcommittee is greatly appreciated. Eleanore J. Hill or Alan Edelman of the Subcommittee staff are available at 224-3721 to discuss this request in detail with members of your staff.

Sincerely,

SAM NUNN,
Chairman.

Enclosure.

ENCLOSURE A

William P. Tyson
Laurence McWhorter
C. Madison Brewer
Jack J. Rugh
Peter Videnieks
Harry H. Flickinger
Stanley E. Morris
Janis A. Sposato
Jay B. Stephens
William Larry Vann
David McCracken
Harold Jones
Stuart E. Schiffer
Michael E. Shaheen, Jr.
Andrea J. Winkler
Barbara G. O'Connor
Ezell Stewart
Philip K. Ojalvo
Dean Cooper
Stephen R. Colgate
Francis X. Mallgrave
Philip Zeidner
Charles E. Miller
Robert Delauney
Robert B. Lyon, Jr.
Richard M. Rogers
David P. Bobzien
James W. Johnston
Robert Huneycutt

U.S. DEPARTMENT OF JUSTICE,
CRIMINAL DIVISION,
Washington, DC, May 4, 1988.

CHARLES R. WORK, Esq.
McDermott, Will & Emery,
Washington, DC.

DEAR MR. WORK: The Criminal Division of the Justice Department has completed its review of allegations that you and your clients, William and Nancy Hamilton, have presented to the Public Integrity Section that criminal conduct was committed by Department of Justice officials in the handling of a contract with INSLAW, Inc., and the bankruptcy proceedings involving INSLAW. Based on the information submitted, the Criminal Division has concluded that the appointment of an Independent Counsel is not warranted. The Criminal Division, however, has decided to initiate an investigation of certain aspects of your allegations. This investigation will be handled by the Public Integrity Section.

In the event further information from you or your clients is needed, the Public Integrity Section will contact you.

Sincerely,

JOHN C. KEENEY,
Acting Assistant Attorney General.

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF PROFESSIONAL RESPONSIBILITY,
Washington, DC, September 28, 1988.

Hon. SAM NUNN,
Chairman, Senate Permanent Subcommittee on Investigations, Committee on Governmental Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This pertains to a request contained in your April 26, 1988 letter to former Attorney General Edwin Meese for: "a comprehensive briefing on the status and/or disposition of any and all investigations on inquiries conducted by the Department's Office of Profesisonal Responsibility . . . with respect to Inslaw, Inc. . . . .".

As you are aware, on September 28, 1987, the former bankruptcy judge for the United States Bankruptcy Court for the District of Columbia, George Francis Bason, Jr., who was presiding over the Inslaw litigation, found that several Department of Justice officials were biased against Inslaw, and called into question the truthfulness of many Department witnesses who testified at the trial in that case. We initiated an investigation of the alleged misconduct matters raised in those findings, and in former Judge Bason's subsequent findings and conclusions of January 25, 1988. That investigation is ongoing at this time.

We appreciate your interest in these matters.

Sincerely,

RICHARD M. ROGERS,
Deputy Counsel.

APPENDIX H

UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF COLUMBIA

Case No. 85-00070 (Chapter 11)

IN RE INSLAW, INC., DEBTOR

INSLAW, INC., PLAINTIFF,

v.

UNITED STATES OF AMERICA AND THE UNITED STATES DEPARTMENT OF JUSTICE, DEFENDANTS

FINDINGS OF FACT AND CONCLUSIONS OF LAW

(Counts I, II and III of the Complaint)

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* * * * * * *

336. The first charges of bias and lack of impartiality of prejudice against Brewer were made by INSLAW's attorney Roderick Hills to Morris in May 1982. (Hamilton, T. 138, 198; Rogers, T. 426) In particular, INSLAW complained of Brewer's intransigent attitude against resolution of the matter of INSLAW's proprietary rights to privately-financed enhancements, and alerted Morris to the fact that Brewer had been fired by INSLAW. (Hamilton, T. 138) On this occasion, no referral to OPR occurred, nor was any investigation of the charges conducted, although Morris directed that Brewer be removed from DOJ's consideration of the proprietary enhancements issue. (PX 324 [Brewer] at pp. 168-171) Notwithstanding this direction, Brewer remained at all times fully involved in such consideration. (PX 330 [McWhorter] at pp. 46-51; PX 324 [Brewer] at pp. 456-458, 464)

337. The next claim of bias against Brewer came in January 1983 when INSLAW's attorney Harvey Sherzer complained to Kamal Rahal, Director of Procurement for JMD, about Brewer's and Videnieks' hostility towards INSLAW. (Hamilton, T. 226) As to these claims, there is nothing in the record to suggest that Rahal referred them to OPR. (Hamilton, T. 226-227)

338. By letter of February 10, 1983, INSLAW's counsel Harvey Sherzer again complained to various officials of the DOJ about improper motivation of DOJ personnel at a February 4, 1983 meeting, and apprised them of his concern that DOJ was motivated by a desire to seek retribution against INSLAW. (Sherzer, T. 959-961; Brewer, T. 1662-1665; PX 58), In addition, Sherzer requested that the atmosphere of bias, unfounded accusation and hostility be corrected ". . . if need be through a change of administrative personnel on the Government's side or otherwise." (PX 58)

339. On May 2, 1983, Hamilton met with William Tyson to complain about the biased administration of the PROMIS Contract on the part of Brewer and Videnieks, and to state that Brewer's conduct may be the result of a lack of impartiality against Hamilton for having previously fired Brewer. (Hamilton, T. 199; PX 341 [Tyson] at pp. 136–138, 140–142; Tyson, T. 1531–1532, 1550–1551) Hamilton specifically identified ten to twelve incidents which appeared to have been the result of Brewer's bias, including Brewer's conduct at the April 19, 1982 meeting in connection with the BJS contract and the spreading of false information concerning INSLAW's financial condition among personnel in various U.S. Attorney's offices. (Hamilton, T. 199–201) Tyson responded that he took seriously these sort of allegations and that he would conduct an inquiry. (Hamilton, T. 202; Tyson, T. 1554–1555) Again, no referral to OPR occurred, nor did Tyson do anthing other than to ask McWhorter whether Brewer had been fired by the Institute. (PX 341 [Tyson] at pp. 140–142; Tyson, T. 1552, 1556; Hamilton, T. 208) INSLAW never even got a report back from Tyson on this matter. The government began to suspend payments on its contract cost expenses later on in May 1983. (Hamilton, T. 208; Tyson, T. 1554–1555)

340. At this May 2 meeting, Tyson informed Hamilton that Brick Brewer was not INSLAW's only problem because there was a Presidential Appointee in the current Administration who was so antagonistic to PROMIS and INSLAW that Tyson had to maneuver to keep him away from meetings of the U.S. Attorneys for fear that he would jeopardize the success of the nationwide PROMIS implementation contract. (Hamilton, T. 202) INSLAW concluded that Tyson was referring to Jensen because Jensen was the only DOJ presidential appointee who had access to U.S. Attorney's meetings and who also had a prior negative opinion about PROMIS. (Hamilton, T. 203, 207) Tyson also had told McWhorter about a Presidential Appointee biased against INSLAW. (PX 330 [McWhorter] at pp. 76–77)

341. Again in 1983, a similar complaint about Brewer's bias was made to Laurence McWhorter. (Hamilton, T. 207–208) As of this time, McWhorter was the deputy DEO for EOUSA and thoroughly understood the responsibilities of that position. (PX 33 [McWhorter] at pp. 8–10) McWhorter told Hamilton that he and Tyson did not believe that Brewer was behaving in a biased fashion. (Hamilton, T. 208) Moreover, McWhorter told INSLAW that he was a good friend of Brewer, that Brewer had been a member of his wedding party and that he was an investment partner with Brewer. (Hamilton, T. 208; McWhorter, T. 1344–1345) McWhorter's only response to the Hamilton complaints was to ask Brewer if he had been fired by INSLAW. (PX 330 [McWhorter] at pp. 33–17) McWhorter did not refer the matter to OPR nor conduct any further inquiry. (PX 330 [McWhorter] at pp. 8–10; McWhorter, T. 1346–1347; Hamilton, T. 208)

342. In October 1983, Sherzer complained to the Director of DOJ's Procurement staff about the outright hostility and rampant bias of Videnieks. (Brewer, T. 1662–1665)

343. In December 1983, Richardson contacted Deputy Attorney General Schmults because of his concern with the indications of bias in the Executive Office, and Schmults arranged a meeting between Richardson and Rooney to try to address "the consequences of bias." (Richardson, T. 641, 642)

344. In the summer of 1984, INSLAW consulted with Irving Jaffee, formerly DOJ's most senior career lawyer on government contracts, and requested him to take a fresh look at the bias issue. (Hamilton, T. 210) Jaffee attempted to get DOJ to remedy this situation during several meetings with DOJ. (Hamilton, T. 201) At one such meeting, Jaffee discussed with DOJ officials, including Brewer, Videnieks, James Johnston and Jeffrey Lovitky (an attorney on the staff of JMD's General Counsel) Videnieks' lack of independence from EOUSA, the effort to drive INSLAW into bankruptcy and the obvious lack of good faith on DOJ's part in dealing with INSLAW. (Hamilton, T. 211) Jaffee was specifically referring to Brewer when he made this statement. (Hamilton, T. 211–212) No investigation was initiated. (Brewer, T. 1662–1665, 1721)

345. In August 1984, Hamilton had a discussion with Brewser during which he contended that Brewer was biased against Hamilton and INSLAW because he had been fired. (PX 324 [Brewer] at pp. 287–289; Brewer, T. 1641–1662; Hamilton, T. 209) Brewser declined to refer these claims to OPR or to any other group or individual at DOJ although he understood his obligation to do so. (PX 324 [Brewer] at pp. 87–88; Brewer, T. 1664–1665) Brewer's explanation for this failure on his part was that Hamilton's complaint was informal, as opposed to formal, and thus not reportable. (PX 324 [Brewer] at pp. 287–289; Brewer, T. 1664) Hamilton specifically asked Brewer to recuse himself which Brewer refused to do. (Hamilton, T. 209; Brewer, T. 164)

346. Again in the summer of 1984 at Hamilton's request, John Shenefield, a law partner of Elliot Richardson and a former DOJ senior official, talked with Tyson and William Van Stavoren about Brewer's bias. (Hamilton, T. 213) No inquiry was initiated. (Brewer, T. 1662–1665)

347. In the fall of 1984, Janis Sposato, General Counsel of JMD was informed by INSLAW that Brewer had been terminated from his employment at INSLAW and accordingly harbored strong negative opinions about INSLAW. (PX 338 [Sposato] at pp. 124–127; Sposato, T. 2266; Hamilton, T. 2596–2598) Although Sposato was the deputy DAEO for JMD and was fully aware of her responsibilities in that regard, her only response to that claim was to ask Brewer whether he had been fired by INSLAW. (PX 338 [Sposato] at pp. 128–130; Sposato, T. 2258–2261, 2263) She did not question INSLAW personnel about their allegation nor did she refer the matter to OPR. (PX 338 [Sposato] at pp. 125–126; Sposato, T. 2267) [28]

[28] Despite DOJ's continual failure to investigate INSLAW's repeated claims of bias by DOJ officials, DOJ officials moved quickly to alledge miconduct against Joe N. Pate, a former LEAA employee who was acting briefly as a consultant to INSLAW. (PX 353; Sposato, T. 2263–2265) DOJ subsequently informed Mr. Pate that his representation of INSLAW regarding the Executive Office contract was permissible. (PX 353)

APPENDIX I

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF PROFESSIONAL RESPONSIBILITY,
Washington, DC, July 8, 1987.

JOSEPH E. GODWIN III,
San Diego, CA.

DEAR MR. GODWIN: This is in response to your letter of May 5, 1987. Our inquiry into your concerns about alleged irregularities on the part of former Deputy Attorney General D. Lowell Jensen and C. Madison Brewer, an employee of the Executive Office for United States Attorneys, as reported in the *Los Angeles Times* on October 12, 1986, is ongoing. It would be inappropriate to accede to your other requests, *viz.*, to be advised of the particulars of our inquiry, at this time.

We appreciate your continuing interest.

Sincerely,

ROBERT B. LYON, Jr.,
Assistant Counsel.

SAN DIEGO, CA, *May 5, 1987.*

Mr. ROBERT B. LYON, Jr.,
Assistant Counsel, U.S. Department of Justice, Office of Professional Responsibility, Washington, DC.

DEAR MR. LYON: Last year I wrote your office regarding possible irregular activities by Mr. D. Lowell Jensen and Mr. C. Madison Brewer in relation to INSLAW.

Finally, after several letters and phone calls, your acknowledged receipt of my letters, and apologized for the delay in responding while also promising to advise me of your conclusions. It has now been ninety days since your letter of February 5, 1987, and a status report as to your present investigation is appropriate. In the event the work is not complete, please be so kind as to explain what additional efforts are necessary and what your schedule to complete the work is.

I look forward to your prompt response. In the event that you should not be able to communicate by letter to me this week please call me at (619) 223-5822. Thank you for your prompt attention.

Sincerely,

JOSEPH E. GODWIN III.

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF PROFESSIONAL RESPONSIBILITY,
Washington, DC, February 5, 1987.

JOSEPH E. GODWIN, III,
San Diego, CA.

DEAR MR. GODWIN: This is in response to your letters of November 20 and December 11, 1986, regarding the activities of certain past and present officials of the Department of Justice. We apologize for the delay in responding.

We have initiated a review of the information that you have submitted as it relates to current departmental employees. Under 28 CFR § 0.39, this Office's jurisdiction extends only to the investigation of allegations of misconduct on the part of current employees. Accordingly, because former Deputy Attorney General D. Lowell Jensen is now a United States District Court Judge for the Northern District of California, any concerns that you have about his conduct should be addressed to the Director, Administrative Office of the United States Courts, Washington, D.C. 20544, for appropriate action.

Once we have completed our review, we will advise you of our conclusions. We appreciate your interest.

Sincerely,

MICHAEL E. SHAHEEN, Jr.,
Counsel.
BY: ROBERT B. LYON, Jr.,
Assistant Counsel.

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF PROFESSIONAL RESPONSIBILITY,
Washington, DC, June 29, 1989.

JOSEPH E. GODWIN III,
San Diego, CA.

DEAR MR. GODWIN: This is in final response to your letters of November 20 and December 11, 1986, January 17 and May 5, 1987, and February 8, 1989, concerning the dealings of Department of Justice employee C. Madison Brewer and former Deputy Attorney General D. Lowell Jensen with Inslaw, Inc.

In your letter of November 20, 1986, you asserted that an October 12, 1986 *Los Angeles Times* news article clearly indicated that Mr. Brewer and former Deputy Attorney General Jensen had "possible motivations and conflicts that properly should have excluded them from certain dealings with Inslaw".

Based on the results of our investigation into the Inslaw matter, we have determined that neither Mr. Brewer nor former Deputy Attorney General Jensen had the "motivations and conflicts" which you referred to, and upon which your concerns were apparently based.

We appreciate your interest.

Sincerely,

ROBERT B. LYON, Jr.,
Acting Counsel.